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A
DIGESTED ABRIDGMENT,
AND
COMPARATIVE VIEW,
OF THE
Statute Law
OF
ENGLAND AND IRELAND,
TO THE YEAR 1811, INCLUSIVE;
ANALYTICALLY ARRANGED IN THE ORDER OF
SIR W. BLACKSTONE'S COMMENTARIES:
WITH A
CHRONOLOGICAL TABLE OF THE STATUTES,
AND AN
INDEX TO THE WORK.

BY JOSEPH GABBETT, ESQ.
BARRISTER AT LAW.

VOL. I.

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1812.

Gabbett
Digest

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DIGESTED ABRIDGMENT

TO THE RIGHT HONOURABLE

COMPARATIVE VIEW

STANDARD

BIBLIOTHECA

REGIA

MONACENSIS.

ENGLAND AND IRELAND

TO THE YEAR 1811, INCLUSIVE

IN THE YEAR 1811, INCLUSIVE

SIR W. DAVENANT

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CHRONOLOGICAL

INDEX TO THE WORK

THE WORK, THE RIGHT HONOURABLE

BY JOSEPH GABRIEL

OF THE UNIVERSITY OF DUBLIN

IN THE COLLECTION OF THE

OF THE UNIVERSITY OF DUBLIN

OF THE UNIVERSITY OF DUBLIN

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OF THE UNIVERSITY OF DUBLIN

(iv)

TO THE RIGHT HONOURABLE

STANDISH O'GRADY,

LORD CHIEF BARON

Of his Majesty's Court of Exchequer

IN IRELAND.

MY LORD CHIEF BARON,

IN considering to whom I should dedicate this work, the high judicial rank and character of your Lordship, present you to me as one whose patronage I should be desirous of soliciting. But it is the recollection of favours you have kindly conferred upon me, and which I value the more because they were unsolicited, that induces me to seek the patron in the friend; and, with your permission, to inscribe this work to you, who, I am sure, will have every wish to promote its favourable reception, and

every

every disposition to excuse its errors, or do justice to its merits. I request therefore of your Lordship to receive these volumes, and this address, as a testimony of the respect and esteem

Of your obliged,

And obedient Servant,

JOSEPH GABBETT.

Kildare Street,
May 28th, 1812.

PREFACE.

THE introduction of the common law of England into Ireland, is to be deduced rather from the annals of history, than from the records of parliament. Sir W. Blackstone asserts, upon the authority of Matthew Paris, that after the conquest of Ireland by king Henry II. the laws of England were then received and sworn to by the Irish nation, assembled at the council of Lismore. But Dr. Leland in his history observes, that there is no foundation for the assertion, that the Irish, wholly abolishing their own form of government, consented to receive the English laws, for that, on the contrary, during this and subsequent reigns, it was deemed to be an act of especial grace or favour, to admit even the more distinguished of the Irish lords to a participation of the rights of English subjects. And Sir J. Davies asserts, that it is evident by all the records of this kingdom, that only the English colonies, and some few septs of the Irish who were enfranchised by special charters, were admitted to the benefit and protection of the laws of England; charters of denization having been common in every reign since Henry II. and being never

*Common law
of England,
how and
when intro-
duced into
Ireland.*

out of use until the time of king James I.* And both these respectable authorities concur in stating, that the petty chieftains of Ireland governed their people by the Brehon law; made their own magistrates and officers; pardoned and punished all malefactors within their several countries; made war and peace one with another, without controlment; and that they did this, not only during the reign of king Henry II. but afterwards in all times, even until the reign of queen Elizabeth. The truth, therefore, appears to be, that though the English laws and liberties were transplanted into Ireland by the first English settlers, and confirmed to them by the charters of king John and Henry III. yet they did not overspread this country until the lapse of many centuries, their extension being commensurate with that of the English pale, or of English conquest or colonization. It was not until the reign of queen Elizabeth, that the system of English tenure was adopted in Ireland; (a) and the grievous and intolerable burdens of coyne and livery†, and other oppressive incidents of Irish vassalage, suppressed or extinguished. But the reign of James I. is the distinguished æra, at which the natives and inhabitants of this kingdom, no longer deemed to be “Irish enemies,” or “degenerate English,” were taken into his majesty’s protection, and began to live under one law. (b)

(a) *Vide*
11 Eliz. st. 3.
c. 1. & 7. Ir.
and 12 Eliz.
c. 4. Ir.

(b) *Vide*
11. 12 & 13
Jac. 1. c. 5.
Ir.

Amongst the other English laws or usages introduced into Ireland, one of the first and most important

* It was a bye-word amongst the Irish, “that they dwelt by west the law, which dwelt beyond the river Barrow.”

† Sir J. Davies refers to an ancient discourse of the decay of Ireland, in which it was said, “that though the damnable custom of coyne and livery was first invented in hell, yet if it had been used and practised there as it had been in Ireland, it had long since destroyed the very kingdom of Beelzebub.”

portant was the institution of parliaments. Though the antiquity of the *modus tenendi parliamentum* said to be transmitted for Ireland by king Henry II. is questioned by some learned antiquaries, yet it incontestibly appears, that prior to the reign of Edward III. the parliament of Ireland was, as Sir Edward Coke observes, regulated according to the institution of England. How far the Irish parliament was or ought to be dependent upon the parliament of England, has been a subject of controversy amongst learned and ingenious men. It is neither my wish or intention to revive this discussion now : but it is important to inquire how any statutes passed in England, came to have authority or force in Ireland: and this question may be answered by referring to the statutes themselves, without resorting to historical deduction, or to any abstract or philosophical reasoning upon the subject. By the 10 Hen. 7. c. 4. Ir. as explained by the 3 & 4 Ph. & M. c. 4. Ir. it was enacted, that no parliament should be holden in Ireland, until the lord lieutenant and council should certify to the king, under the great seal, the considerations, causes, and articles of all such acts, provisions, and ordinances as were thought meet to be enacted ; and should have received the king's answer, under the great seal of England, declaring his pleasure, either for the passing of the said acts in such form and tenor as they should be sent into England, or else for the change or alteration of them, or any part of them. But this latter statute provided, that such other causes, considerations, &c. as the lord lieutenant and council should think good to be enacted, might, in like manner, be certified pending the time of parliament ; and that no other acts than such as were certified and returned under the great seal of England, should be passed in Ireland.

And

*Independen-
cy of Irish
parliament.*

And it was further enacted by the 11 Eliz. st. 3. c. 8. Ir. that no bill should be certified into England for the repeal or suspending of Poyning's act, (10 Hen. 7. c. 4. *supra*) before such bill should be first agreed to by the greater number of lords and commons in parliament assembled. Whether the object of this act of Sir Edw. Poyning's administration was (according to Sir J. Davies) to restrain the governors of the realm from imposing laws upon the commons, not tending to the general good, but to serve their private turns, and to strengthen their particular factions; or (according to Mr. Molyneux) to prevent any thing passing in the parliament of Ireland surreptitiously, to the prejudice of the king, or the English interest of Ireland; it is clear, as Dr. Leland remarks, that this statute did not contain any resignation of legislative rights, or any formal investiture of the parliament of England with the power of making laws for Ireland. But the several provisions of the 10 Hen. 7. c. 4. Ir. and 3 & 4. Ph. & M. c. 4. Ir. above stated were, in the year 1782, distinctly recited and repealed by an act of the Irish parliament (21 & 22 Geo. 3. c. 47. Ir.) Prior to this period the parliament of England had passed several acts affecting or purporting to bind Ireland; and the 6 Geo. 1. c. 5. Eng. had expressly declared, that the king's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of Great Britain, in parliament assembled, had, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the kingdom and people of Ireland: But this statute was repealed by the 22 Geo. 3. c. 53. Eng. And the 23 Geo. 3. c. 28. Eng. further declared and enacted, that the right claimed by the people of Ireland to be bound only by laws enacted

enacted by his majesty, and the parliament of that kingdom, in all cases whatever, &c. * should be established and ascertained for ever, and should at no time thereafter be questioned or questionable.

But though the authority of the English legislature to make laws for Ireland was at all times denied by the Irish parliament, and was thus, at this memorable period of Irish history, renounced on the part of Great Britain ; yet many English statutes have been from time to time adopted in Ireland by the parliament of this country. Sir Richard Bolton (formerly lord chief baron of the exchequer in Ireland) states, in a note to his edition of the Irish statutes, that in the 13th year of king Edward II. the statute of Merton made the 20th of Henry III. [†the statute of Westminster the first made the 3d of Edward I. the statute of Gloucester made the 6th of Edward I. and the statute of Westminster the second made the 13th of Edward I.] were all confirmed by the parliament of Ireland ; and all other statutes which were of force in England were referred to be examined in the next parliament. And that in the 10th of Henry IV. it was enacted in Ireland, that the statutes made in England should not be of force in Ireland, unless they were allowed and published in this kingdom by parliament. And that the like statute was made again in the 29th year of Henry VI. These statutes are not to be found in the parliament rolls : but Sir R. Bolton affirms, that he had seen the same exemplified under the great seal, and that

How English statutes came to be of force in Ireland.

* This act also restored the appellate jurisdiction to Ireland.

† The Red Book of the exchequer, and Black Book of Christchurch, Dublin, contain entries or exemplifications of these statutes of Edward I. amongst others. And it appears from the *memoranda* at the foot of several English acts, that they were transmitted to Ireland by a transcript under the great seal of England.

that the exemplification remained in the treasury of the city of Waterford. Whether the authority of Sir. R. Bolton shall be received as sufficient proof of such acts having been passed, or not, yet the instances are very numerous in which certain English statutes were extended to Ireland, by acts of special or general adoption, which are printed and to be found upon record. By the 18 Hen. 6. c. 1. Ir. all the statutes made in England against the extortions and oppressions of purveyors, were enacted to be put in execution in Ireland. And by the 32 Hen. 6. c. 1. Ir. the statutes against provisors to Rome, as well in England as in Ireland, are confirmed, and enacted to be kept in force. The 8 Edw. 4. c. 1. Ir. specially recites and adopts the English statute 6 Ric. 2. c. 6. Eng. concerning rape; and further enacts, that all other statutes made in England should be ratified and confirmed, and adjudged in force from the 6th day of March then last. The 10 Hen. 7. c. 5. Ir. again confirms the English statutes against provisors: and by the 10 Hen. 7. c. 11. Ir. the statute of Winchester is adopted in Ireland. But the 10 Hen. 7. c. 22. Ir. (which is one of the acts of Sir Edw. Poyning's administration) recites, that many good and profitable statutes had been lately made within the realm of England, whereby the said realm was brought to great wealth and prosperity, and that by all likelihood so would this realm (of Ireland), if the said statutes were used and executed within the same; and therefore ordains, that all statutes late made within the realm of England, concerning the common and public weal of the same, shall be used and executed within Ireland, in all points, according to the tenor and effect of the same. And by the 14 Hen. 7. Ir. all statutes made in England for punishing customers, controllers, and searchers, for misdemeanors;

*Poyning's
Act.*

meanors ; or for punishment of merchants or factors ; are enacted to be of force in Ireland ; provided they should be first proclaimed at Dublin, Drogheda, and other market-towns. Several other acts passed in subsequent reigns might be here also referred to, which specially adopt particular English statutes. Some instances also occur of Irish acts explaining or repealing English statutes which had been previously in force in Ireland. But the cases are very numerous in which the Irish statutes appear to be literal transcripts of English acts, without any reference however to them : and in many instances also the Irish acts are very nearly corresponding to the English statutes which they have followed with but little deviation. For all these I must refer to the body of this work : but the 21 & 22 Geo. 3. c. 48.

Ir. (commonly called Yelverton's act) deserves to be here particularly noticed. This statute enacts, first, that all statutes made in England or Great Britain, under which any lands, &c. in this kingdom, or any estate or interest therein, are or is holden or claimed, or which concern the title thereto, or any evidence respecting the same ; and, 2dly, all such clauses and provisions contained in any statutes made in England or Great Britain, concerning commerce, as import to impose equal restraints on the subjects of England or Ireland, and to entitle them to equal benefits ; and, 3dly, all such clauses, &c. contained in any statutes made as aforesaid, as equally concern the seamen of England and Ireland, or Great Britain and Ireland, save so far as the same have been altered or repealed, shall be accepted, used, and executed in this kingdom : Provided (s. 2.) that all such statutes, so far as aforesaid, concerning commerce, shall bind the subjects of Ireland only so long as they continue to bind the subjects

*Yelverton's
Act.*

subjects of Great Britain. And, 4thly, by s. 3. all such statutes made in England or Great Britain as concern the stile or calendar; and 5thly, all such clauses, &c. contained in any statutes made as aforesaid, as relate to the taking any oath or oaths, or making or subscribing any declaration or affirmation in this kingdom, or any penalty or disability for omitting the same; or, 6thly, which relate to the continuance of any office civil or military, or of any commission, or of any writ, process, or proceeding at law or in equity, or in any court of delegacy or review, in case of a demise of the crown, shall be accepted, &c. in this kingdom, according to the present tenor of the same respectively. From the vague or general terms in which this act is framed, it is not easy to say, with certainty, what English statutes were in the contemplation of its framer, or of the legislature in enacting it: but I have endeavoured, in several parts of these volumes, to point out such as appeared to me to be referred to by the respective clauses; save as to those concerning commerce, which do not fall within the scope of this work. Though this statute is objectionable in point of form, it is to the honor of the Irish parliament, that in the same session in which they repealed one of Poyning's acts (10 Hen. 7. c. 4.) as inverting the English constitution, and intrenching on their independence, they followed the principle of the other (10 Hen. 7. c. 22.) in adopting several English statutes, that, by * “a similarity of laws, they might strengthen and perpetuate that affection and harmony which at all times ought to subsist between Great Britain and Ireland.” The period, however, was but short between the recognition of the independence of the Irish legislature in 1782, and its extinguishment by merger in the parliament of Great Britain; the act of union, (39 & 40 Geo. 3. c. 67.

* *Vide* preamble to 21 & 22 Geo. 3. c. 48. Ir.

c. 67. Eng. and 40 Geo. 3. c. 38. Ir.) having provided by the third article, that the united kingdom should be represented in one and the same parliament, to be stiled “the parliament of the united kingdom of Great Britain and Ireland.” The result of these prefatory observations is, that the common law of England and Ireland is the same; and as to the statute law, that many English statutes have been adopted in Ireland; and many also followed by acts of the Irish legislature, with little or no deviation. And it may be here also observed, that in several instances Ireland has taken the lead, the acts of the Irish parliament having been adopted or followed in England.

It had always appeared to me, from the time of my having first applied myself to the study of the law, to be a desirable object to inquire and point out how far the Irish parliament, during six centuries that it legislated for Ireland, had pursued the steps of the parliament of England or Great Britain; with what deviation the statutes of one country had been followed in the other, and what were the peculiar laws of England and Ireland respectively. The work of Mr. Eyre, which was published 30 years since, professed to have had this object in view, but it is a mere abridgment of the commentaries of Sir W. Blackstone, with a few notes referring to certain Irish statutes which are *in pari materia* with some of those English acts which are mentioned in the commentaries. The editors of the old abridgments of Irish statutes also professed to give tables of the English acts from which those of Ireland were taken: and Mr. Vesey’s edition of the Irish statutes at large, contains marginal notes referring to several corresponding English acts, down to the reign of his present majesty; but it appeared to

Plan and object of this work.

me that each of these works was in this respect imperfect and inaccurate; no regular comparison being made by any of these gentlemen between the statutes of the respective countries. A comparative view of the English and Irish statutes seemed, therefore, to be a great *desideratum*; and this feeling I had, I believe, in common with every other member of the profession of the law in this country. The measure of a legislative union between Great Britain and Ireland, seemed to me to furnish an additional argument for the necessity of such a review, and an additional incitement to the undertaking; and the idea accordingly suggested itself to my mind, that my time could not be more profitably employed, than in the framing of such a digest and comparative view of the English and Irish statutes, as might not only be useful to the profession of the law, and to the public in general, but also assist the peers of parliament in the exercise of the appellate jurisdiction, direct the legislature in the formation and extension of their acts, and finally lead to the assimilation of the laws in the several parts of the united kingdom. A great portion of my time during several years was occupied in forming the groundwork of this extensive plan: the operations of comparing and abstracting which such an undertaking required, were of a tedious and laborious nature: but a principal difficulty consisted in the arrangement of the materials which I had collected for the execution of the work. The continual reference which I was in the habit of making to Sir W. Blackstone's commentaries, for the English statutes relating to the several branches of the law, suggested to me the idea of arranging this digest upon his plan; and I thought I could not render it more useful, or recommend it more to public favour, than

*Reasons for
adopting
analytical
arrangement.*

than by making it an associate to the commentaries, and engrafting it on that valuable work, which, as Sir W. Jones observes, “is the most correct and beautiful outline that ever was exhibited of any human science.” In adopting this arrangement, I am aware, however, that I may have some prejudices to encounter: All former abridgments of the English or Irish statutes have been uniformly alphabetical: but their authors all concur in observing, that “many statutes may for different reasons be placed under different heads;” and accordingly none of them agree in the choice of the titles under which they should be placed. Mr. Cay, in his abridgment of the English statutes, very justly remarks, that “unless one consistent method be observed throughout in arranging the statutes under their proper heads, it is not easy to find them, or to make use of the abridgment.” It appeared to me, therefore, that the statutes should have a fixed and determinate arrangement, and that they should be classed in the order of scientific distribution, and not dispersed or collected according to the fancy of an author. It may, however, be objected, that to understand this analytical arrangement, a person must be first acquainted with the science of the law, and that the sphere of the utility of an abridgment so arranged must be of necessity contracted. To obviate any such objection, I determined to annex an index to the contents of the work, which should embrace the heads under which the statutes are ranged in other abridgments, and which I hope will be found to supply additional aids for the purpose of referring to the statutes upon any particular subject. But the plans of the other abridgments or digests of English or Irish statutes, appeared to me to be objectionable upon another ground, namely, that the statutes are arranged

Index or alphabetical table, annexed to the work.

anged chronologically, and abridged in the consecutive order of the sections in each act. It is obvious that this principle militates against all notions of scientific arrangement ; and this manifest inconvenience arises, that it becomes necessary to read the whole of a voluminous title, before a person can know how the law is upon the point in respect to which he desires information. Thus, the statutes relating to the title "Parliament," which in the index to this work are distributed into fourteen heads, and in the body of the work into many subordinate divisions, are (if I may be permitted to say, without appearing to be invidious,) heaped together in other abridgments without observing any distinction, connexion, or relation between them.

*Marginal
notes.*

In addition to the aid afforded by the index, I have throughout the work introduced marginal notes, which I hope will assist the reader in referring with facility to any statute or clause which he may be desirous of finding. These notes are not framed as abridgments of the several sections, (which would rather defeat the purpose for which they were designed,) but merely as keys to the matter of each clause.

*Distribution
into chapters,
sections, and
paragraphs.*

The distribution of this digest into chapters, corresponds with that of Sir W. Blackstone's commentaries, save that there are some chapters of that work to which no statute could be referred. I have also followed his divisions of the chapters into sections. With respect to the minor divisions of the work into paragraphs, instead of making every clause or section of an act a distinct paragraph, according to the plan of other abridgments, for which there appeared to be no good or sufficient reason, I have in general included within the limits of the same paragraph, all such clauses as related to the same point, to preserve their connexion from being broken

broken or interrupted, and to prevent also the work from driving out (according to the printer's phrase) to too great a bulk.

Exclusive of the index, there is also annexed to this work a chronological table of the English statutes, containing a short note of the contents of each act, the pages of this digest where they are to be found, and pointing out also the corresponding or analogous Irish statutes. And a second table is subjoined, in which, *e converso*, the Irish statutes appear in the first column, and the corresponding or analogous English statutes in the second column, the third column in both tables serving to shew the subject matter of the acts, and the pages of the work where they are abridged or referred to. These tables also point out the duration of such acts as are temporary, or the statutes by which any have been perpetuated.

Plan of chronological tables.

It is often desirable to know in what year of the christian era a statute is passed, I have therefore added a chronological table of the reigns of the kings of England, from William the conqueror's to his present majesty's, shewing their commencement and duration.

Table of the reigns of the kings of England.

To facilitate the reference to the statutes at large, a table of the contents of each volume of Ruffhead's and Pickering's editions of the English statutes, as also of the several volumes of the Irish statutes, is annexed.

Table of contents of the several volumes of the statutes.

The principle upon which I proceeded in abridging the acts, was to omit no word of value, or which appeared to be at all material to the right understanding or construction of them. Words of form merely, or such as may be easily supplied by any intelligent reader, are alone rejected: and in every case where I thought the titles or preambles served to throw any light upon the enacting parts, I have stated them also. It may appear extraordinary or incredible,

What statutes are the objects of this compilation.

incredible, that the statute law of England and Ireland should be compressed within the compass of these volumes : but I wish it to be understood, that this compilation is confined to such acts as relate to the general statute law, or what may be called the science of the law. All acts of a local or personal nature are, of course, excluded from this description. Such statutes as concern, peculiarly, particular classes of men, as ecclesiastical persons, their glebes, and glebe-houses, &c. so also those concerning the army and navy, &c. though not altogether omitted, are but briefly stated. I have also taken but a partial or cursory view of the statutes relating to the revenue, which form a distinct and peculiar code in themselves. Another extensive branch of laws which this work excludes, is that which concerns the external or internal trade of the country : some provisions of these are however occasionally introduced. Many acts which concern the public police or economy are upon the same principle omitted, or but partially noticed : of this description are the statutes concerning gaols and houses of correction, poor-houses, and other such institutions, highways, or roads and bridges, and other objects of municipal regulation. I do not mean to deny their proper utility to the statutes which I have thus omitted, I mean only to say, that, in the eye of a lawyer, they are not of equal importance to be generally known, or such as the members of the profession of the law should be equally familiar with : they either are or should be the subjects of other compilations. As a further reason for taking this circumscribed course, I thought that inasmuch as the primary object of this work was to compare the statute law of England and Ireland, I had pursued the parallel as far as it would be desirable to have it traced. If I am asked what
statutes

statutes are within the scope of this work, my answer is, that I have fully abridged above 1200 English and imperial statutes, and about 500 Irish statutes, exclusive of those which are but partially stated; and that by reference to the titles of the several chapters, or the index to the contents, or to the chronological tables, it may be seen what acts this work professes to embrace. But if by some I may be thought to have omitted statutes which I should have introduced, I may be arraigned by others for having abridged several of an obsolete description: Certainly the statutes respecting the proceedings in real actions, and others of this nature, and many also respecting the criminal law, are antiquated or out of use, but they are not repealed; and as they compose a part of the general statute law, and are the foundations upon which the modern structure of our law is built, I have therefore given them a place in this digest: And it may also answer this useful purpose, of bringing them before the view of parliament, to the end that such “as do not sort with the condition of the times,” may be either repealed or modified. In rejecting or retaining acts, I have, however, exercised the best judgment of which I was capable.

Another part of the mechanism of this work consists in the mode of exhibiting the distinctions between the English and Irish statutes. For this purpose, in abridging the English statutes, where I found any Irish acts *in pari materia*, then if the variations were not too numerous, or of too great length, they are in general pointed out in side or bottom notes, or by way of observation in the text or body of the work; or otherwise the Irish statutes are also abridged, and brought into juxtaposition with the English statutes upon the same subject, so that the comparison between them may

*Distinctions
between Eng-
lish and Irish
statutes, how
pointed out.*

be

be easily made, and the distinctions be quickly discovered.* Where the Irish statutes are transcripts of any English acts, or precisely corresponding, they are referred to as such.

Addenda &
Corrigenda.

I have thus explained the plan and object of this work; I cannot flatter myself that it is altogether free from errors; but I am conscious that I have used every diligence, and made every exertion in my power to avoid them. It was scarce to be expected that a work of this nature should be struck off in a perfect form at the first heat: but I have in the *Addenda* subjoined to the work, corrected every material error, and supplied every omission, which, upon an attentive review, I was able to discover. This appendix or supplement contains also the statutes of the three last sessions, which were published since this work was put to press.

Errata.

Notwithstanding the great attention I paid to the correction of the press, I find that some typographical errors, and grammatical inaccuracies, had either escaped me, or the compositors who should have corrected them: but these also I have pointed out in the *Errata*.

From this exposition of the plan of this work, it is hoped that it will appear to be not only useful as a comparative view of the English and Irish statutes, for which purpose it was primarily designed, but also as a digest and review of the statutes themselves, or of such as were most important to be brought before the view, and within the reach of the parliament and the public. A general revision of the statute law has been often recommended from the throne, and has been petitioned for by both houses of parliament in England. It has engaged

* The English statutes are distinguished by the letters Eng. the Irish by Ir. and those common to England and Ireland by the letters E. & I.

gaged the labours of successive committees, and has occupied the attention of some of the most distinguished and learned men in England.* In 1650 a committee was named to revise all former statutes and ordinances then in force, and consider as well which were fit to be continued, altered, or repealed, as how the same might be reduced into a compendious way, and exact method, for the more easy and clear understanding of the people. And in 1666 a committee was also appointed to confer with such of the lords, judges, and other persons of the long robe, who had already taken pains and made progress in perusing the statute laws, and to consider of repealing such former statute laws as they should find necessary to be repealed, and of expedients for reducing all statutes of one nature under such a method and head, as might conduce to the more ready understanding and better execution of such laws. But this great national work was never carried forward to any degree of maturity. If in the reign of Elizabeth, James I. or at the period of the usurpation or restoration, the undertaking was found too arduous to be accomplished, it will be admitted that it required some courage to encounter, and some fortitude to persevere in a task of a similar nature, at a time when the statutes have so multiplied, and when the accumulated weight of the Irish statutes was also superadded. I have not the vanity to think that these volumes contain such a revision as these great men had contemplated; but I have some hope that they will furnish materials useful for such a review, and that I have at least smoothened the path, and diminished the labours of those who shall follow me in this course. But the difficulty of this undertaking consisted not
C only

* Lord Bacon, Lord Hale, Lord Hobart, &c. &c.

* See the speech of James I. to the parliament.

only in the great mass of statutes to be digested, but also in the number * “of cross and cuffling statutes” which are to be found upon various topics of the law, so that it is often difficult to say how far one may not have been superseded by another; and even when they were not inconsistent, yet to incorporate the amendments, which I have in many instances done, was a task which required minute and laborious attention. To separate those acts which were in force from those which were expired, or were superseded or repealed, was attended also with considerable trouble; and I have, in many instances, lost much time in tracing an act through several continuing statutes to the one which had finally perpetuated it. And here I beg leave to submit it, whether it would not be more adviseable, in cases where the policy or expediency of any acts are doubtful, to leave their duration undefined, (which will not preclude their being repealed when it shall so seem proper,) than to be continuing them from time to time, which requires the constant vigilance of parliament, and produces considerable embarrassment, from the multitude of acts and clauses continuing and reviving others. I beg leave also to observe, that sufficient attention has not been paid to the framing the titles to acts of parliament; as instances might be produced of clauses of a general nature being contained in acts purporting to be merely local, and provisions of permanent force and authority in statutes which profess by their titles to be merely temporary. The titles are frequently defective also, in not embracing or leading to the variety of subjects about which they are conversant: but here I should submit that, there ought to be a distinctness and an unity in every act of parliament, to avoid the confusion arising from a mixture of discordant matter, which has frequently occurred.

The

The 22 Geo. 2. c. 46. Eng. was called a "Hodgepodge Act," from the number of unconnected subjects to which it related, but there are many such to be found amongst the English and Irish statutes. Some perplexity has also arisen from the want of attention to a just arrangement of the several clauses of statutes: This has in many instances, I believe, arisen from the alterations that bills undergo in their progress through parliament, but in many also from a defect in their original formation. I have given to the statutes, and to their several clauses, that arrangement which appeared to me to be most proper: A few alterations have, however, since suggested themselves to me, which I should be glad to have made. With respect to the imperial statutes in particular, I have, in several instances, been at a loss to know to what parts of the united kingdom they were meant to extend, or be confined. I should submit, therefore, that either the title or preamble of each act should be so framed as to remove all uncertainty of this kind; or else that a distinct proviso should be introduced for the purpose. Such were the difficulties I had to encounter, and the perplexities which embarrassed me in my progress.

In framing this digest I availed myself of the compilations of other authors, not as directions for the mode of abridging the statutes, but as leading me to the statutes themselves. From Mr. Williams's digest in particular I derived some assistance, but to Mr. Ball's index my acknowledgments are more especially due. I was otherwise unassisted in the execution of this work: If, therefore, any merit it possesses, it is entirely my own, and I am alone responsible for its errors. It is now above three years since I announced this work as nearly ready for the press: I felt it to be my duty at that time to submit to the judges and bar of Ireland a *prospectus* or outline of the plan: The sanction which I then received

ceived for its publication, and in particular from the noble and learned lord * who presides over the department of the law in this country, served to reanimate a spirit which had almost sunk under the weight of the undertaking. For the last three years I have applied myself, almost exclusively, to the revision of the work, and the correction of the press. But it little concerns the public to know the time that it has employed, or the other sacrifices I have made for its accomplishment. Suffice it to say that I have devoted many and the best years of my life to the undertaking, and, without private assistance or public aid, have arrived at its conclusion, by a slow and silent progress through a course of solitary abstraction and irksome labour. Yet "its hardships may be without honour, and its labours without reward." But I am not without hope, that it may be deemed by the public to be a meritorious service, and that those high authorities who have already approved of it as a "good desire," may think that it has been "brought to a good effect." I shall not however be unrewarded, if this effort to redeem time, and to do something useful, shall recommend me to the esteem of the Irish bar, and of "that little platoon in society" in which I live. I have this further hope, that this incorporate union of the English and Irish statutes may tend to the amendment and amelioration of our laws, and serve to cement the alliance, and promote the harmony between Great Britain and Ireland, so that these countries "may grow into one nation, whereby there may be an utter oblivion and extinguishment of all former differences and discord betwixt them."

Vide 11, 12,
& 13 Jac. 1.
c. 5. Ir.

JOSEPH GABBETT.

* Thomas Lord Baron Manners, Lord Chancellor.

CHAP. I.

Of the Absolute Rights

OF

INDIVIDUALS.

THE Great Charter made in the 9th year of the reign of king Henry III. having incorporated the previous charters of liberties, may not only be regarded as the most ancient statute on record, but also as the first which contains provisions asserting the absolute rights of individuals, by protecting every person living under the British constitution, in the free enjoyment of his life, his liberty, and his property. The 29th chapter* of this capitulary declares or enacts, that no freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or otherwise destroyed, [†nor shall any man be condemned at the king's suit, either before the king in his bench, or before any other commissioner or judge,] but by lawful judgment of his peers, or by the law of the land; and further in the name of the king declares, that to no man shall right or justice be sold, denied, or delayed. This statute contained also a confirmation of the liberties of the church, and of the privileges of the city of London, and other cor-

Book I.

§. 1.

The primary rights of personal security, personal liberty, and private property, asserted by the Great Charter.

9 Hen. 3. c. 29. E. & I.

*VOL. I.

B

porate

* As this chapter of *Magna Charta* is so often referred to as the basis of the British constitution, it seems to be proper to state it in the very words: *Nullus liber homo capiatur vel imprisonetur, aut disseisiatur de libero tenemento suo, vel libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exulet, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terræ: Nulli vendemus, nulli negabimus aut differemus rectum vel justitiam.* The charter granted to the people of Ireland in the first year of this reign, as also that granted to the people of England in the year following, contained also a similar clause.

† This translation is according to Sir Edw. Coke's exposition of the words "*nec super eum ibimus, nec super eum mittemus.*" 2 Inst. 46.

porate towns, redressed many grievances then incident to feudal tenures, protected the subject against the abuses of purveyance, and other oppressions and exactions common in that day, and contains many other provisions with respect to private rights, as well as concerning the public police, and the administration of justice, several of which are now obsolete, but others will be found in the subsequent pages of this work. This charter hath been confirmed above 30 times,* but the following statutes are its principal confirmations. By the

*2 Inst. Proem.
5 Co. Rep. 64. a.

25 Edw. 1. st. 1.
c. 11. E & I.

Confirmation of
Great Charter.

c. 2.

c. 3.

c. 4.

5 Edw. 3. c. 9.
E. & I.

25 Edw. 3. st. 5.
c. 4. E. & I.

25 Edw. 1. st. 1. c. 11. E. & I. it is directed to be sent under the king's seal, to all sheriffs of shires, and to all other the king's officers, and to all cities throughout the realm, together with writs commanding the said charter (as well as the charter of the forest) to be published, and declared to be confirmed. And all justices, sheriffs, mayors, and other ministers, are thereby required to allow the said charters, when pleaded, in all points. And by this statute (c. 2.) if any judgment be given contrary to the Great Charter, it shall be void. By c. 3. the said charters are required to be sent, under the king's seal, to the cathedral churches, and to be read before the people twice in the year. And by c. 4. all archbishops and bishops shall pronounce sentence of excommunication against all those that by word, deed, or counsel, do contrary to said charters, or that in any point break them; and the said curses shall be twice a year denounced; and if the said prelates, or any of them, be remiss in the denunciation of the sentences, the archbishops of Canterbury and York shall compel them to the execution of their duties. The 5 Edw. 3. c. 9. E. & I. further enacts, that no man shall be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods, or chattels, seized into the king's hands, against the form of the Great Charter, and the law of the land. And by the

25 Edw. 3. st. 5. c. 4. E. & I. none shall be taken by petition or suggestion made to the king or his council, unless it be by indictment or presentment of lawful people of the same neighbourhood, or by process made by writ original at the common law. And none shall be put

cut

out of his franchise or freehold, unless he be duly brought to answer, and forejudged by course of law; and if any thing be done to the contrary, it shall be redressed, and holden for none. The 28 Edw. 3. c. 3. E. & I. also enacts, 28 Edw. 3. c. 3. E. & I. that no man shall be put out of land or tenement, nor taken nor imprisoned, nor disinherited, nor put to death, without being brought in answer, by due process of law.

And by the 42 Edw. 3. c. 3. E. & I. no man shall be put 42 Edw. 3. c. 1. & 3. E. & I. to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land, and if any thing be done to the contrary, it shall be void in law, and holden for error. And by c. 1. of this statute, the Great Charter (and the charter of the forest) shall be kept in all points, and if any statute be made to the contrary, it shall be holden for none.

The rights of personal security and personal liberty are further asserted by the Petition of Right, 3 Car. 1. Eng. which recites the 9 Hen. 3. c. 29. 25 Edw. 3. st. 5. c. 4. and 28 Edw. 3. c. 3. *supra*, and that against the tenor of said statutes, and other the good laws and statutes of this realm, divers subjects had of late been imprisoned without any cause shewn, and when for their deliverance they were brought before the justices by writs of *habeas corpus*, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by the king's special command, signified by the lords of the privy council, and yet were returned back to several prisons, without being charged with any thing to which they might make answer according to law: And further recites, that of late, divers commissions under the great seal had issued forth, by which certain persons were appointed commissioners, with power to proceed, within the land, according to martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor, by pretext whereof some subjects had been by some of the said commissioners put to death; and sundry grievous offenders escaped the punishment due to them by the

Right of personal security, and personal liberty, vindicated by the Petition of Right.

3 Car. 1. Eng.

Arbitrary imprisonment, and proceedings by martial law, prohibited.

16 Car. 1. c. 10. Eng.

Court of star-chamber abolished.

s. 4.

Similar jurisdictions in Wales, &c. also abolished.

laws and statutes of the realm; it is therefore prayed and enacted, that no freeman in any such manner as is before mentioned, shall be imprisoned or detained; and that no commissions for proceeding by martial law, or of like nature, shall issue forth to any person to be executed as aforesaid. The 16 Car. 1. c. 10. Eng. recites the 9 Hen. 3. c. 29. 5 Edw. 3. c. 9. 25 Edw. 3. st. 5. c. 4. 28 Edw. 3. c. 3. and 42 Edw. 3. c. 3. *supra*, as also the 36 Edw. 3. st. 1. c. 15. by which all pleas before the king's justices, or in his other places, or before any of his other ministers, or in the courts and places of any other lords within the realm, were required to be entered and inrolled in Latin; and recites also the 3 Hen. 7. c. 1. E. & I. and 21 Hen. 8. c. 20. Eng. from which the authority of the court of star-chamber was derived; and forasmuch as the proceedings, censures, and decrees of that court, had by experience been found to be an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government; and forasmuch as the council-table had of late assumed unto itself a power to intermeddle in civil causes, and matters only of private interest between party and party, and adventured to determine of the estates and liberties of the subject, contrary to the law of the land, and the rights and privileges of the subject; this statute therefore enacts (s. 3.) that the court called the star-chamber shall be dissolved, and neither the lord chancellor, lord treasurer, keeper of the privy seal, or president of the council, nor any bishop, temporal lord, privy counsellor or judge, shall have power to hear or determine any matter in the star-chamber, or to do any judicial or ministerial act in the said court; and all acts of parliament by which any jurisdiction is given to the star-chamber, shall, for so much, be repealed. And by s. 4. the like jurisdiction used in the court before the president and council in the marches of Wales, and in the court before the president and council in the northern parts, and also in the court of the duchy of Lancaster, and in the court of exchequer of the county palatine of Chester, held before the chamberlain and council of that court, shall be also repealed; and

and no court or place of judicature shall be erected within England or Wales, which shall have the like jurisdiction as hath been used in the star-chamber. And this statute declares and enacts, (s. 5.) that neither his majesty nor his privy council, have any jurisdiction, power, or authority, by English bill, petition, articles, libel, or any other arbitrary way, to examine or draw into question, determine or dispose of the lands or goods of any subject of this kingdom; but the same ought to be tried and determined in the ordinary courts of justice, and by the ordinary course of law. By s. 6. if any lord chancellor, lord treasurer, keeper of the king's privy seal, president of the council, bishop, temporal lord, privy counsellor, judge or justice, shall offend contrary to this law, they shall forfeit £500. unto any party grieved, his executors, &c. who shall prosecute for the same, and first obtain judgment, to be recovered in any court of record at Westminster, by action of debt, &c.; and if any person against whom any such recovery shall be had, shall offend again in the same, he shall in like manner forfeit £1000. unto any party grieved, &c. and if any person against whom such second recovery shall be had, shall offend again in the same kind, and shall be convicted by indictment, information, or other lawful way, such person shall be incapable to bear his office, and shall be likewise disabled to make any gift or disposition of his lands, &c. or goods, &c. or to take any gift or legacy to his own use. And by s. 7. every person so offending, shall likewise forfeit unto the party grieved his treble damages, to be recovered in any court of record at Westminster, by action of debt, &c. By s. 8. if any person shall be restrained of his liberty by order or decree of any such court as aforesaid, or by command of the king in person, or by warrant of the council board, or of any of his majesty's privy council, every person so restrained, upon demand or motion made unto the judges of the king's bench or common pleas, in open court, shall, without delay, have a *habeas corpus* directed generally unto all and every sheriffs, gaoler, minister, officer, or other person, in whose custody the party shall be; and the sheriffs

s. 5.

Proceedings of king and council declared illegal.

s. 6.

Penalty for offending against this act.

s. 7.

s. 8.

Any person restrained of his liberty contrary to this act, shall have a habeas corpus.

iffs or other person shall, at the return of the writ, on due notice given, at the charge of the party who procureth such writ, and upon security by his own bond to pay the charge of carrying back the prisoner, if he shall be remanded, (such charges to be ordered by the court, if any difference shall arise,) bring the body of the party before the judges in open court, and shall certify the cause of his detainer, and thereupon the court, within 3 court days after such return made, shall proceed to determine whether the cause of commitment be just, and shall thereupon do what to justice shall appertain. And if any thing shall be wilfully done or omitted by any judge, officer, &c. contrary to the direction hereof, such offender shall forfeit to the party grieved his treble damages, to be recovered as aforesaid. By s. 9. this act shall extend only to the court of star-chamber, and to the said courts holden before the president and council, in the marches of Wales, and before the president and council, in the northern parts, and to the court of the duchy of Lancaster, and the court of exchequer of the county palatine of Chester, and all courts of like jurisdiction, to be hereafter erected, and to the warrants and directions of the council board, and to the commitments of any persons made by the king in person, or by the privy council. And by s. 10. no person shall be molested for any offence against this act, unless he be impleaded within 2 years after the offence committed. The 16 Car. 1. c. 11. Eng. is to be here also referred to, which recites, that the commissioners for causes ecclesiastical, by colour of the 1 Eliz. c. 1. Eng. (an act restoring to the crown the ancient jurisdiction over the state, ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same,) had, to the great oppression of the king's subjects, used to fine and imprison them, and to exercise other authority not belonging to ecclesiastical jurisdiction; and therefore repeals the clause* (s. 18.) of the 1 Eliz. c. 1. Eng. by colour of which they acted, and enacts, that no new

*Treble damages
for default.*

s. 9.

*To what courts
this act shall
extend.*

s. 10.

*Limitation for
actions, &c.*

16 Car. 1. c. 11.
Eng.

*High commission
court abolished.*

* The 2 Eliz. c. 1. Ir. contains a similar clause (which will be stated in another place), but which has not been repealed, though a bill was brought into parliament for the purpose, 8 Oct. 1703. *vide* 3 Com. Journ. p. 40.

new court shall be erected within England or Wales, which may have like power as the high commission court pretended to have: but that all commissions, &c. made or to be made by the king, and all powers granted thereby, and all acts and decrees to be made by colour thereof, shall be void. And the 3d article of the Bill of Rights ^{1W.& M. st.2. c. 2. Eng.} declares, that the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious. And the following clauses of the *Habeas Corpus* Act, 31Car. 2. c.2. Eng. (intituled "an act for the better securing the liberty of the subject, and for pre- ^{31 Car. 2. c. 2. s. 12. Eng.}vention of imprisonments beyond the seas,") may be here stated; the other provisions of this act for preventing the delays of sheriffs, gaolers, and other officers, in making ^{*Illegal imprisonment beyond the seas, how punished.*} returns to writs of *habeas corpus*, being reserved for another place. This statute enacts (s. 12.) that no subject being an inhabitant or resident of England, &c. shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into ports, garrisons, islands, or places beyond the seas, or within or without the dominions of the king; but that every such imprisonment shall be illegal, and every person so imprisoned shall maintain an action of false imprisonment in any court of record against the person by whom he shall be so committed, detained, imprisoned, sent prisoner, or transported, and against every person that shall frame, contrive, write, seal, or countersign any warrant or writing for such commitment, &c.; or shall be advising, aiding, or assisting in the same; and shall in such action recover damages not less than £500. and treble costs, in which action no stay of proceeding by rule, order, or command, nor any injunction, protection, or privilege, nor any more than one imparlance, shall be allowed, except such rule of the court wherein the action shall depend, made in open court, as shall be thought necessary, for special cause to be expressed in said rule; and the person who shall knowingly frame, &c. any warrant for such commitment, detainer, or transportation; or shall so commit, &c. any person contrary to this act, or be any ways advising, &c. therein, being convicted thereof, shall be disabled to bear any

office

s. 13.

Proviso.

s. 14.

Proviso.

s. 16.

*Offenders where
tried.**1 W. & M. st. 2.
c. 2. Eng.
Excessive bail
prohibited.**What constitu-
tional barriers
erected in Ire-
land.*

office of trust or profit within England, Wales, or Berwick, or any of the dominions thereunto belonging, and shall incur the penalties of the statute of provision and *præmunire*, 16 Ric. 2. c. 5. and be incapable of the king's pardon. But by s. 13. nothing in this act shall extend to give benefit to any person who shall, by contract in writing, agree with any merchant or owner of any plantation, or other person, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract. And by s. 14. if any person convicted of felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him in prison for that purpose, such person may, notwithstanding this act, be transported into any parts beyond the seas. And by s. 16. if any person residing in this realm, shall have committed any offence in Scotland or Ireland, or any of the islands or foreign plantations of the king, where he ought to be tried for such offence, such person may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this act. And in further vindication of the right of personal liberty, it is declared by the 10th article of the Bill of Rights, 1 W. & M. st. 2. c. 2. Eng. that excessive bail ought not to be required.

Such of the statutes above mentioned, as were prior to the reign of Henry VII. were adopted in Ireland by the 10 Hen. 7. c. 22. Ir. But no parliamentary declarations of the liberties of the people have been made in Ireland, similar to the Petition of Right, and Bill of Rights. With respect to the 16 Car. 1. c. 10. Eng. it is to be observed that the court of Castle Chamber in Ireland exercised a jurisdiction similar to that of the Star Chamber in England, (its authority being derived from the 3 Hen. 7. c. 1. E. & I. *ante* p. 4. and recognized by several Irish statutes,) but no act similar to the 16 Car. 1. c. 10. Eng. has been ever passed in Ireland, though a bill appears to have been brought into parliament,* 27 Sept. 1695, for the abolition of this court as a new

* *Vide* 2 Com. Journ. 691.

new and oppressive jurisdiction. And with respect to the 31 Car. 2. c. 2. Eng. *supra*, it is observable, that though the several provisions of this English statute (which will be stated in another place) were adopted by the 21 & 22 Geo. 3. c. 11. Ir. yet this latter act does not extend to the prevention of imprisonments beyond the seas, and its title is accordingly varied from the English act in this respect. And this *Habeas Corpus* Act of Ireland contains this peculiar provision (s. 16.) that it shall be lawful for the chief governor and privy council of this kingdom, to suspend this act, by a proclamation under the great seal of this kingdom, during such time only as there shall be an actual invasion or rebellion in this kingdom, or Great Britain, and that no judge, or justice of peace, shall bail or try any person charged with being concerned in such invasion or rebellion, without an order from the lord lieutenant and privy council, signed by six of the privy council.

21 & 22 Geo. 3.
c. 11. Ir.

*Habeas Corpus
Act of Ireland.*
s. 16.

*Proviso as to its
suspension.*

In addition to the provisions contained in *Magna Charta*, and the other statutes above mentioned, in maintenance of the right of private property, the 25 Edw. 1. st. 1. c. 5. E. & I. provides, that the aids, tasks, and prises, granted to the king for his wars and other occasions, shall not be taken for a customary charge. And by c. 6. no manner of aids, tasks, or prises, shall be taken but by common assent of all the realm, and for the common profit thereof, saving the ancient aids and prises accustomed. And by the 34 Edw. 1. st. 4. c. 1. E. & I. no tallage or aid shall be taken without the assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land. The 14 Edw. 3. st. 2. c. 1. E. & I. contains also an undertaking on the part of the king, and his heirs, that the prelates, earls, barons, and others of the commonalty, citizens, burgesses, and merchants, shall not be charged to make any aid, but by the common assent of the prelates, earls, barons, and other great men and commons in parliament. And the *Petition of Right* 3 Car. 1. recites, that by the 34 Edw. 1. st. 4. c. 1. and 25 Edw. 1. st. 1. c. 6. *supra*, and other the good laws and statutes of the realm, the king's sub-

*Right of private
property vindicated.*

25 Edw. 1. st. 1.
c. 5. E. & I.

*No aids, &c. to
be taken but by
assent of parliament.*

c. 6.

34 Edw. 1. st. 4.
c. 1. E. & I.

14 Edw. 3. st. 2.
c. 1. E. & I.

3 Car. 1. Eng.

*Divers arbitrary
exactions re-
strained.*

jects had inherited this freedom, that they should not be compelled to contribute to any tax, tallage, or aid, or other like charge, not set by common consent in parliament; yet divers commissions directed to sundry commissioners in several counties had issued, by means whereof the people were assembled, and required to lend divers sums of money to his majesty; and many of them, upon their refusal, have had an oath administered to them, not warranted by law, and have been constrained to become bound to give attendance before the privy council, and in other places, and others of them have been imprisoned, &c.; and divers other charges had been laid and levied upon the people by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace, and others, by command or directions from the king, or his privy council, against the laws and free customs of the realm; and great companies of soldiers and mariners had been dispersed into divers counties, and the inhabitants compelled to receive them; and therefore prays and enacts, that no man shall be compelled to yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament, and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested concerning the same, and that the people shall not be so burthened with soldiers and mariners. And this statute was confirmed by the 16 Car. 1. c. 14. Eng. which declared that the charge imposed upon the subject in this reign, commonly called ship-money, and the late proceedings in respect thereto, were against the laws and statutes of the realm, the right of property, the liberty of the subject, former resolutions in parliament, and the Petition of Right. And the 4th article of the Bill of Rights also declares, that levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal.

16 Car. 1. c. 14.
Eng.

*Ship-money
abolished.*

1 W. & M. st. 2.
c. 2. Eng.

*Levying money
by pretence of
prerogative, re-
strained.*

§. 2.
*Right of apply-
ing to the courts
of justice for re-
dress of injuries
asserted.*

II. The chapter of *Magna Charta* above mentioned not only asserts the primary rights of personal security, personal liberty, and private property, but also vindicates the

the auxiliary or subordinate right of the subject of *applying to the courts of justice for redress of injuries*, which, as thereby declared, he is to obtain without sale, denial, or delay. And the 2 Hen. 4. c. 1. E. & I. also declares, that the king's liege people may freely and peaceably, under his sure and safe protection, go and come to his courts to pursue the law, or defend the same, without disturbance or impediment; and that full justice and right shall be done in his said courts, as well to the poor, as to the rich. The 2 Edw. 3. c. 8. E. & I. enacts, that no commandment by the great or little seal shall disturb or delay common right, and though such shall come, the justices shall not fail to do right. And the 11 Ric. 2. c. 10. E. & I. also provides, that neither letters of the signet, nor of the king's privy seal, shall be sent to the prejudice of the realm, nor in disturbance of the law. To this head also are to be referred the two first articles of the Bill of Rights, which declare, that the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal; and, secondly, that the pretended power of dispensing with laws, or the execution of laws, by regal authority, as then of late assumed and exercised, is also illegal. And this act (s. 12.) declares and enacts, that no dispensation by *non obstante*, of or to any statute, or any part thereof, shall be of any effect, except a dispensation shall be allowed of in such statute, or specially provided for.

9 Hen. 3. c. 29.
E. & I.2 Hen. 4. c. 1.
E. & I.2 Edw. 3. c. 8.
E. & I.*Ordinary course
of justice not to
be obstructed by
prerogative of
king.*11 Ric. 2. c. 10.
E. & I.1 W. & M. st. 2.
c. 2. Eng.*The king cannot
suspend or dis-
pense with laws.*

s. 12.

*No dispensation
by non obstante*

III. The right of *petitioning for redress of grievances* is also asserted by the Bill of Rights, the 5th article of which declares, that it is the right of the subjects to petition the king, and that all commitments and prosecutions for such petitioning are illegal. The statutes which qualify this right, or restrain the abuse of this privilege, will be found in another part of this work.

§. 3.

*Right of peti-
tioning asserted.*1 W. & M. st. 2.
c. 2. Eng.

IV. Another auxiliary right, is that of *carrying arms*, in respect to which the 7th article of the Bill of Rights declares, that the subjects, which are protestants, may have arms for their defence, suitable to their condition, and as allowed by law. The statutes by which papists are

§. 4.

*Right of carry-
ing arms as-
serted.*1 W. & M. st. 2.
c. 2. Eng.

*

disabled

disabled from carrying arms, as a punishment for actual or constructive recusancy, are reserved for another place.

Laws of England the birth-right of the people.

12 & 13 W. 3.
c. 2. Eng.

Lastly, it is declared by the Act of Settlement, 12 & 13 W. 3. c. 2. Eng. that the laws of England are the birthright of the people, and that all the kings and queens who shall ascend the throne of the realm, ought to administer the government thereof according to the said laws, and their officers and ministers to serve them respectively according to the same. This clause of this statute, as also those of the Bill of Rights, which have been stated in this chapter, may be considered as declaratory of the constitutional law of the empire, and extending therefore to Ireland. And it is to be observed, that these acts, so far as they respect the settlement of the crown, are recited and adopted by the 2 Ann. c. 5. Ir.

CHAP. II.

Of the Parliament.

§. 1.

Parliament to be held frequently.

4 Edw. 3. c. 14.
E. & I.

36 Edw. 3. st. 1.
c. 10. E. & I.

16 Car. 2. c. 1.
Eng.

1 W. & M. st. 2.
c. 2. Eng.

6 W. & M.
c. 2. s. 1. Eng.

THE frequent meeting of parliament is provided for by the 16 Car. 2. c. 1. Eng. which recites or refers to the 4 Edw. 3. c. 14. and 36 Edw. 3. st. 1. c. 10. E. & I. which required that a parliament should be holden once a year, or oftener if need be, and enacts, that the sitting and holding of parliaments, shall not be intermitted or discontinued above three years at the most. The 13th article of the Bill of Rights, (1 W. & M. st. 2. c. 2. Eng.) insists upon it as one of the undoubted rights of the people, that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently. And the 6 W. & M. c. 2. Eng. recites, that frequent new parliaments tend very much to the happy union and good agreement of the king and people, and therefore provides (s. 1.) that a parliament shall be holden once in three years at the least: and

and by s. 2, that within three years at the farthest from the determination of every parliament, legal writs under the great seal shall be issued by the direction of the king, for calling assembling and holding another new parliament; which provision was also contained in the 16. Car. 2. c. 1.

s. 2.

II. *The independence of the king as one of the constituent parts of the parliament* is asserted by the 12 Car. 2. c. 30, Eng. which, while it attaints persons guilty of the murder of king Charles I, declares that by the undoubted and fundamental laws of the kingdom, neither the peers of the realm, nor the commons, nor both together in parliament or out of parliament, nor the people collectively nor representatively, nor any other persons whatsoever, ever had or ought to have any coercive power over the persons of the kings of the realm; and by the 13 Car. 2. st. 1. c. 1. s. 3. Eng. to assert maliciously and advisedly by speaking or writing, that both or either house of parliament have a legislative authority without the king or words to that effect, is made a *præmunire*.

§ 2.

Of the constituent parts of parliament, and first of the king.
12 Car. 2. c. 30.
s. 1. Eng.

13 Car. 2. st. 1.
c. 1. s. 3. Eng.

III. With respect to *the house of peers*, the 5 Ann. c. 8. s. 12. Eng. provides that the sixteen peers, who by the 22d article of the treaty for the union of England and Scotland were to have a right to sit in the house of peers in the parliament of Great-Britain, shall be named by the peers of Scotland whom they represent, out of their own number, by open election and plurality of voices of the peers present, and of the proxies for such as shall be absent, the said proxies being peers, and producing a mandate in writing duly signed before witnesses, (and the constituent and proxy being both qualified according to law,) and in case of the death or legal incapacity of any of the said sixteen peers, the peers of Scotland shall nominate another of their own number in place of such peer in the manner before mentioned; and the 6 Ann. c. 23. s. 1. Eng. (which alters the 22d. article of the Union) further provides, that when the crown shall declare its pleasure for summoning and holding any parliament of Great-Britain, in order to the electing and summoning the sixteen peers of Scotland, a proclamation shall be issued under the

§ 3.

The house of peers.
5 Ann. c. 8.
s. 12. Eng.

Election of 16 peers for Scotland.

6 Ann. c. 23.
s. 1. Eng.

great

*Proclamation
for the purpose.*

s. 11.

*So for the elec-
tion of a new
peer.*

s. 2.

s. 3.

s. 8.

*to be accompa-
nied by ordinary
attendants only.*

s. 9.

*Not to debate of
other matters.*

s. 4.

*Appointment of
proxies.*

s. 11.

great seal of Great Britain, commanding all the peers of Scotland to assemble and meet, at such time and place in Scotland, as shall be appointed in said proclamation for that purpose, and so by s. 11. in case of the death or disability of any peer elected, a proclamation shall issue in like manner, for the election of another in the room of such peer deceased or legally disabled; and such proclamation is thereby directed s. 2. to be duly published at the market-cross at Edinburgh, and in all the county towns of Scotland, 25 days at the least before the time thereby appointed for such meeting of the peers. By s. 3. the peers who meet on such proclamation are required, before they proceed to the election, to take the oaths of allegiance, supremacy, and abjuration, and to make and subscribe the declaration against popery, and by s. 8. the peers shall come to such meeting with their ordinary attendants only, upon pain of incurring the penalties inflicted by the several laws and statutes in Scotland, which prescribe and direct with what numbers and attendants the subjects there may repair to the courts of justice; and by s. 9. every peer who shall at such meeting act, propose, debate or treat of any other matter, shall incur the penalty of *præmunire* expressed in the stat. 16 Ric. 2. c. 5. In respect to the appointment of proxies, this act provides s. 4. that such peers as live in Scotland, may take the oaths of allegiance, supremacy, and abjuration, and subscribe the declaration against popery in any sheriff's court in Scotland, and every sheriff or his deputy is thereby required, to return the original subscription of such oath and declaration signed by the peer who took the same, and to make a return in writing under hand and seal to the peers so assembled, of such peers taking said oath, &c. and such peer shall be thereby enabled and qualified to make a proxy, or send a signed list containing the names of the sixteen peers for whom he wishes to vote, (or by s. 11. the name of such one peer as he shall nominate upon the election of a new peer in the event of death or disability as aforesaid) and such of the peers of Scotland as at the time of issuing such proclamation reside in England, may take and subscribe the said oath, and make and subscribe the said declaration

claration, in the court of Ch. K. B. C. B. or Exc. in England, which being certified by writ to the peers in Scotland at their meeting, under the seal of such court, shall entitle such peer to make his proxy and to send a signed list as aforesaid, and in case any peer who shall before the issuing of such proclamation have taken said oath (to be certified as aforesaid, or if taken in parliament to be certified under the great seal of Great-Britain) shall at the time of issuing such proclamation, be absent in the service of the crown, such peer may make his proxy or send his signed list. By s. 5. & 6. such peers of Scotland as are also peers of England, shall sign their proxies and lists by the title of their peerage in Scotland, and no peer shall be capable of having more than two proxies at one time; and by s. 7. at such meeting of the peers they shall all give in the names of the persons by them nominated, and the lord-clerk-register, or two of the principal clerks of the session appointed by him to officiate in his name, shall after the election is duly made and examined, certify the names of the sixteen Peers so elected, and sign and attest the same in the presence of the peers, which certificate shall, by the lord-clerk-register, or two of the principal clerks, be returned into the court of chancery of England before the time appointed for the meeting of parliament.

s. 5. & 6.

s. 7.

Names of 16
peers to be cer-
tified.

By the act for the union of Great Britain and Ireland, 40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng: it is provided, article 4. that four lords spiritual of Ireland by rotation of sessions, and twenty-eight lords temporal of Ireland, elected for life by the peers of Ireland, shall be the number to sit and vote on the part of Ireland in the house of lords of the parliament of the united kingdom; and by the 40 Geo. 3. c. 29. Ir. which is recited and incorporated in the 8th article of the act of union, it is provided, s. 1. that the said four lords spiritual shall be taken from among the lords spiritual of Ireland in the manner following, viz. that one of the four archbishops, and three of the eighteen suffragan bishops, shall sit in the house of lords of the united parliament in each session thereof, the said right of sitting being

32 Peers for
Ireland.40 Geo. 3. c. 38.
Ir.40 Geo. 3. c. 67.
Eng.40 Geo. 3. c. 29.
Ir.

s. 1.

4 spiritual peers
by rotation.

s. 4.

28 temporal
peers for life.Writs to elect a
new representa-
tive peer.

Notice thereof.

being regulated as between the said archbishops respectively, by a rotation among the archiepiscopal sees from session to session; and in like manner that of the bishops, by a like rotation among the episcopal sees, according to the order of priority therein specified, such rotation to proceed regularly and without interruption from session to session, notwithstanding any dissolution or expiration of parliament, and this act, s. 4. further prescribes the mode in which the twenty-eight temporal peers were to be elected to sit in the first session of the imperial parliament, and during their lives, as representatives of the peers of Ireland, in the house of lords of the united kingdom, who are accordingly to be entitled to receive writs of summons to that and every succeeding parliament—and provides for this purpose, that whenever the seat of any of the twenty-eight lords so elected shall be vacated by demise or forfeiture, the chancellor of the united kingdom for the time being, upon receiving a certificate under the hand and seal of any two lords temporal of the parliament of the united kingdom, certifying the decease of such peer, or on view of the record of attainder of such peer, shall direct a writ to be issued under the great seal of the united kingdom, to the chancellor of Ireland, directing him to cause writs to be issued by the clerk of the crown in Ireland, to every temporal peer of Ireland, who shall have sat and voted in the house of lords of Ireland before the union, or whose right to sit and vote therein, or to vote at such elections, shall, on claim made in his behalf, have been admitted by the house of lords of Ireland before the union, or after the union by the house of lords of the united kingdom.—And notice shall forthwith be published by the clerk of the crown in the London and Dublin Gazettes of the issuing of such writs, and of the names and titles of all the peers to whom the same are directed; and to said writs shall be annexed a form of return thereof, in which a blank shall be left for the name of the peer to be elected; and said writs shall enjoin such peer within 52 days from the *teste* of the writ to return the same into the crown office of Ireland, with the blank filled up by

by inserting the name of the peer for whom he shall vote to succeed to such vacancy; and said writs and returns shall be bipartite, so that the name of the peer to be chosen shall be written twice, that is, once on each part of such writ and return, and so as that each part may also be subscribed by the peer to whom the same shall be directed, and likewise be sealed with his seal of arms; and one part thereof shall remain of record in the crown office of Ireland, and the other part be certified by the clerk of the crown to the clerk of the parliament of the united kingdom; but this clause provides that no peer of Ireland except such as shall be so elected as a representative peer in the house of lords of the united kingdom, and shall have there taken the oaths and subscribed the declaration prescribed by law, shall, under pain of suffering such punishment as the house of lords of the united kingdom may award and adjudge, make a return to such writ, unless he shall, after the issuing thereof, and before the day on which the writ is returnable, have taken the oaths, and signed the declaration by law required to be taken and signed by the lords of the united kingdom before they can sit and vote in the parliament thereof; which oaths, &c. shall be taken and subscribed in the court of chancery in Ireland, or before a justice of the peace of Ireland, a certificate whereof, signed by such justice, or by the register of the court of chancery, shall be transmitted by such peer with the return, and shall be annexed to the part thereof remaining of record in the crown office of Ireland; and the clerk of the crown is thereby required forthwith, after the return day of the writ, to publish in the London and Dublin Gazettes, a notice of the name of the person having the majority of votes, who shall accordingly during his life be one of the peers to sit and vote on the part of Ireland in the house of lords, &c. In case of an equality of votes, the names of such persons who have an equal number of votes are hereby directed to be written on pieces of paper of a similar form, and to be put into a glass by the clerk of the parliament of the united kingdom, at the table of the house of lords whilst the

Return of such writs.

Oaths of electors.

Name of peer elect published.

Lots drawn in case of equality of votes.

VOL. I. C house

s. 6.

Case of spiritual
peer becoming a
temporal peer.

house is sitting, and the peer whose name shall be first drawn out by such clerk, shall be deemed the peer elected; and this act further provides, s. 6. that in case any lord spiritual being a temporal peer of the united kingdom, or being a temporal peer of Ireland, shall be chosen by the lords temporal, the rotation of representation of the spiritual lords shall, during the life of such spiritual peer, proceed to the next spiritual lord, that is to say, if such spiritual lord so chosen a temporal peer shall be an archbishop, then the rotation shall proceed to the archbishop whose see is next in rotation; and so if such spiritual lord shall be a suffragan bishop, then the rotation shall proceed to the next suffragan bishop.

§ 4.

House of Com-
mons.

45 members for
Scotland.

5 Ann. c. 8.
Eng.

IV. I shall postpone for the present the statutes which respect the privileges of Parliament, till these acts are stated which regard *the commons as the third constituent part of parliament*:—and first, as to their number.—The 22d article of the treaty for the union of England and Scotland provides that forty-five shall be the number of the representatives of Scotland in the house of commons of the parliament of Great-Britain, to be elected in such manner as by an act of the then present session of the parliament of Scotland was or should be settled. And by the 5 Ann c. 8. Eng. (which incorporates an act passed in the parliament of Scotland, 5th Feb. 1707,) thirty of the said representatives of Scotland in the house of commons, shall be chosen by the shires or stewartries, and fifteen by the royal boroughs, viz.—one for every shire and stewartry, excepting the shires of Bute and Caithness, which shall choose one by turns;—the shires of Nairn and Cromarty, which shall also choose by turns, and in like manner the shires of Clackmannan and Kinross shall choose by turns.—And in case of the death or incapacity of any of the members from the respective shires or stewartries, the shire or stewartry which elected the said member shall elect another in his place.—And the fifteen representatives for the royal boroughs shall be chosen as follows, viz. the town of Edinburgh shall send one member to the parliament of Great-Britain, and each of the other boroughs shall elect a commissioner in the

the same manner as they use to elect commissioners to the parliament of Scotland; which commissioners and boroughs being divided in fourteen districts, shall meet and elect one for each district (and the several boroughs are hereby accordingly enumerated and distributed into districts). And where the votes of the commissioners for the boroughs met to choose representatives shall be equal, the president of the meeting shall have a casting vote, according to his vote as a commissioner from the borough, the commissioner from the eldest borough presiding in the first meeting, and the commissioners from the other boroughs by turns, in the order as they are called in the rolls of the parliament of Scotland: and in case any of the fifteen commissioners from boroughs shall decease or become legally incapable, the town of Edinburgh, or the district which chose the said member, shall elect a member in his place. And the 6 Ann. c. 6. s. 5. Eng. provides, that when any parliament shall be summoned, the forty-five representatives of Scotland shall be elected by writs under the great seal of Great-Britain, directed to the several sheriffs and stewarts of the respective shires and stewartries; and the said sheriffs and stewarts shall on receipt of such writs forthwith give notice of the time of election for the knights or commissioners for their shires or stewartries, and at such time the freeholders shall meet at the head burghs of their shires and stewartries, and proceed to such election:—and the clerks of the said meetings, immediately after the elections, shall return the names of the persons elected to the sheriff or stewart, who shall annex it to his writ and return it into the court out of which the writ issued.—And as to the manner of election of the fifteen representatives of the royal boroughs, the sheriff of the shire of Edinburgh shall, on receipt of the writ directed to him, forthwith direct his precept to the lord provost of Edinburgh, to cause a burgess to be elected for that city, and on receipt of such precept the city of Edinburgh shall elect their member, and their common clerk shall certify his name to the sheriff of Edinburgh, who shall annex it to his writ and return it; and as to

6 Ann c. 6.
s. 5. Eng.

the other royal boroughs divided into fourteen districts, the sheriffs or stewarts of the several shires and stewartries, on the receipt of their writs, shall direct their precepts to every royal borough, reciting the contents of the writ, and the date thereof, and commanding them forthwith to elect each of them a commissioner, and to order the said commissioners to meet at the presiding borough of their district, (naming the borough) upon the 30th day after the *teste* of the writ, unless it be Sunday, and then the day after, and then to choose their burgess for the parliament; and the common clerk of the presiding borough shall, immediately after the election, return the name of the person elected to the sheriff or steward of the shire or stewartry wherein such presiding borough is, who shall immediately annex it to his writ, and return it; and in case a vacancy shall happen in time of parliament by the decease or legal incapacity of any member, a new member shall be elected in his room, conformable to the method herein appointed; and in case such a vacancy be of a representative of any one of the said fourteen districts of royal boroughs, that borough which presided at the election of the deceased or disabled member, shall be the presiding borough at such new election.—By s. 6. upon the issuing writs of summons for the election of a new parliament, if any shire or stewartry wherein a royal borough is, hath not then a turn or right to elect a commissioner or knight of the shire for that parliament, it shall be omitted out of the writ directed to such sheriff or steward, to cause a commissioner for that shire to be elected.

s. 6.

100 members
for Ireland.

40 Geo. 3, c. 38.
Ir.

40 Geo. 3. 67.
Eng.

40 Geo. 3, c. 29.
Ir.

The 4th article of the act for the union of Great-Britain and Ireland, 40 Geo. 3. c. 38. Ir. & 40 Geo. 3. c. 67. Eng. enacts, that one hundred commons (two for each county of Ireland, two for each of the cities of Dublin and Cork, one for the university of Dublin, and one for each of the thirty-one most considerable cities, towns, and boroughs (which are particularly specified in the eighth article, and in the representation act, 40 Geo. 3. c. 29. Ir. which preceded the act of union) shall be the number to sit and vote on the part of Ireland in the house of commons of the parliament of the united kingdom.

dom. And by the 8th article of the act of union above referred to, and 40 Geo. 3. c. 29. s. 7. Ir. it is provided, ^{40 Geo. 3. c. 29. s. 7. Ir.} that whenever the king shall by proclamation under the great seal of the united kingdom summon a new parliament, the chancellor of Ireland shall cause writs to be issued to the several counties, cities, the university of Dublin, and the boroughs of Ireland, as specified in these acts respectively, for the election of the one hundred members; and whenever any vacancy of a seat for any of said counties, &c. shall arise by death or otherwise, the chancellor upon such vacancy being certified to him by the proper warrant, shall forthwith cause a writ to issue for the election of a person to fill up such vacancy; and such writs, and the returns thereon, being returned into the crown office in Ireland, shall be transmitted from thence to the crown office in England, and certified to the house of commons, in the same manner as such returns have been usually or shall be hereafter certified: and copies of such writs and returns attested by the chancellor of Ireland for the time being, shall be evidence of such writs and returns in case the originals shall be lost.

V. *As to the laws respecting the elections of members to serve in parliament*, those which relate to the qualifications of the electors are first for consideration. ^{§ 5. Qualifications for electors.} The 8 Hen. 6. c. 7. E. & I. as amended by the 10 Hen. 6. c. 2. E. & I. has provided that the knights of all counties, within the realm, shall be chosen by the people, ^{8 Hen. 6. c. 7. E. & I. 10 Hen. 6. c. 2. E. & I.} whereof every man shall have freehold to the value of 40s. at least by the year above all charges, within the proper counties; but so much of these acts as related to the residence of persons to be elected members to serve in parliament, or of the persons by whom they are to be chosen, was repealed by the 14 Geo. 3. c. 58. Eng. which statute also repeals the 1 Hen. 5. c. 1. ^{14 Geo. 3. c. 58. Eng. 1 Hen. 5. c. 1. E. & I. E. & I.}

* Of the 513 members for England and Wales, 35 have been added by authority of parliament, viz. 27 for Wales, by 27 Hen. 8. c. 26. Eng. 4 for the county and city of Chester, by 34 Hen. 8. c. 13. Eng. and 4 for the county and city of Durham, by 25 Car. 2. c. 9. Eng.

33 Hen. 8. st. 2.
c. 1. Ir.

Residence.

*Quantum of
estate.*
18 Geo. 2. c. 18.
s. 5. Eng.

s. 6.

*No public tax to
be deemed a
charge.*

E. & I. which had previously required the residence of knights, citizens, and burgesses, within their respective shires, cities, and boroughs, as a qualification for their election.—These statutes of Henry V. and Henry VI. became in force in Ireland by virtue of the 10 Hen. 7. c. 22. Ir. and the 33 Hen. 8. st. 2. c. 1. Ir. contains also the same provision in respect to requiring the knights, citizens, and burgesses for every parliament in Ireland to be resident and dwelling within the respective counties, &c. and to be chosen and elected by the greater number of the inhabitants of said counties, &c. and that every elector of said knights shall dispend and have land and tenements of estate and freehold in their said counties, to the yearly value of 40s. at the least, over and above all charges; and any inhabitants electing a representative in any other manner than as aforesaid, thereby incurs a forfeiture of 100s. and a penalty of £.100 is imposed upon any sheriff or other officer who shall return any knight, &c. as well as upon any knight, &c. who shall take upon himself to be knight, &c. contrary to the above provisions of this act, one moiety to the king, and the other to the informer, &c. to be recovered in any court of record by action of debt, &c.—No Irish act has directly repealed the provisions of this act of Henry VIII. or of those of Henry V. or Henry VI. which made residence a necessary qualification for electors.

In respect to the quantum of estate necessary to qualify electors to vote for knights of the shires in England and Wales, the 18 Geo. 2. c. 18. s. 5. Eng. also provides, in like manner as the statutes of Henry VI. above mentioned, that no person shall vote in any such election without having a freehold estate in the county for which he votes, of the clear yearly value of 40s. above all charges payable out of the same: but by s. 6. no public or parliamentary tax, county, church, or parish, rate or duty, or any other tax, rate, or assessment, to be assessed or levied on any county, &c. shall be deemed a charge within the meaning of this act. The election law of Ireland distributes freehold into three classes, viz. of 40s., £.20, or £.50 yearly value, and contains distinct provisions in respect to each.

By

By the 20 Geo. 3. c. 17. Eng. amended by the 30 Geo. 3. c. 35. Eng. no person shall vote for electing a knight of the shire in England or Wales * in respect of any messuages lands or tenements which have not been charged or assessed, for 6 calendar months next before such election, towards some aid granted or to be granted to the king (in case any such aid be then granted and assessable,) *in the name of the person claiming to vote; or* in respect of any messuages, &c. to which the person claiming to vote shall have become entitled by descent, marriage-settlement, devise, promotion to a benefice in a church, or promotion to any office, within 12 calendar months next before such election, which messuages, &c. shall not have been, within 2 years next before such election, charged or assessed to the land tax *in the name of the person through whom the person claiming to vote shall derive title*, or some predecessor of such person claiming to vote, but it shall not be necessary that *the name of the tenant actually occupying such messuages, &c.* shall be inserted in such assessment according to the form prescribed by the 20 Geo. 3. c. 17.; and by the 30 Geo. c. 35. s. 1. Eng. any person who shall have been charged, &c. towards some aid granted, &c. by a land tax *in the name of a tenant actually occupying* the same at the time of such assessment, shall be in like manner qualified to vote, *although the name of the person so claiming to vote, or the name of the person through whom he derives title, or of the predecessor of the person so claiming to vote, shall not be inserted in the assessment according to the form annexed to the 20 Geo. 3. c. 17.; but annuities or fee-farm rents (duly registered) issuing out of any messuages, &c. rated or assessed, are excepted by the 20 Geo. 3. c. 17. s. 2.* This statute 20 Geo. 3. c. 17. prescribes the duty of the commissioners of the land tax in respect to delivering to assessors a printed form of assessment, who are to deliver a duplicate thereof to one of the chief constables of the hundred, who is also required to give the same upon oath to the clerk of the peace, at the next quarter sessions in court the first day of such sessions, to be filed amongst the records

Freeholds in counties to be assessed to some land-tax aid.

20 Geo. 3. c. 17. Eng.

30 Geo. 3. c. 35. Eng.

30 Geo. 3. c. 35. s. 1. Eng.

20 Geo. 3. c. 17. s. 2. Eng.

* Or for burgesses for Cricklade, Wilts.

*Duty of clerk
of the peace.*

s. 13.

s. 14.

s. 15.

s. 16, 18, 19.

*Penalty for de-
fault.*

s. 17.

*Freeholds in
counties of ci-
ties or towns to
be assessed.*

19 Geo. 2.

c. 28. s.3. Eng.

records of such sessions; and the clerk of the peace is thereby also required s. 13. to permit such duplicate to be inspected at all seasonable times, and to give copies thereof or any part thereof on payment of 6*d.* for every 300 words or figures, and so in proportion for any lesser number; and by s. 14. such clerk of the peace or his deputy is required to attend at every election of a knight of the shire, upon reasonable notice, at the request of any candidate or his agent, who shall pay him two guineas a day for his attendance, and 1*s.* 6*d.* a mile for his travelling charges; and the clerk of the peace or his deputy is also required by s. 15. after issuing any writ or precept for the election of a knight of the shire, to attend gratis from day to day, from 9 in the forenoon to 3 in the afternoon on each day, at the place where the records of the county are kept, from the time of the delivery of such notice to the day immediately preceding the day of election, for the purpose of receiving applications for the inspection of such duplicates and for making copies of them; these several duties of the clerk of the peace and his deputy are enforced (s. 16, 18, 19.) by a penalty of £.500 to be recovered by the party grieved by action of debt, &c. in any court of record at Westminster, provided such action is brought within 2 months after the offence shall have been committed, or otherwise by such person as shall sue within 12 calendar months for the same; and such clerk of the peace, &c. shall upon conviction forfeit his office, and be incapable of being a clerk of the peace, &c. for such county, &c. or of acting as such; and by s. 17. final judgment upon any verdict obtained against such clerk of the peace, &c. shall be deemed a sufficient conviction.

The 19 Geo. 2. c. 28. s. 3. Eng. also provides that no person shall vote for the electing a member for any city or town being a county of itself in England, in respect of any freehold messuages lands or tenements of the yearly value of 40*s.*, where the right of voting therein shall require the freehold to be of the yearly value of 40*s.*, which have not been assessed towards some aid granted to his majesty by a land tax, 12 calendar months next before such election, provided that nothing herein shall restrain any

any person from voting at any such election for such city, &c. in respect of any rents, or any messuages or seats belonging to any office, by reason that the same have not been usually assessed to the land tax: and the acting commissioners of the land tax, or any 3 of them, at their meetings, shall sign and seal a duplicate of the copies of the assessments delivered to them by the assessors, after all appeals determined, and the same shall deliver to the officiating clerk of the peace within said cities, &c. to be kept amongst the records of the sessions, which all persons may inspect, paying 6*d.*: and the said clerks of the peace, or their deputies, shall give copies of the said duplicates, or any part thereof, to the person paying at the rate of 6*d.* for every 300 words. As there is no land tax in Ireland these provisions are peculiar to England. And by the 42 Geo. 3. c. 116. E. & W. persons may vote at elections in England and Wales, out of lands, &c. the land tax whereon has been redeemed or purchased (in pursuance of this and other acts herein recited) without shewing such lands, &c. to have been assessed to the land tax.

42 Geo. 3. c. 116
s. 200. E. & W.

*Proviso as to
lands, the land
tax whereon is
redeemed, &c.*

The clause (s. 5.) of the 18 Geo. 2. c. 18. Eng. *ante* p. 22. further provides, that no person shall vote at any election for a county, without having been in the actual possession or in the receipt of the rents and profits of his freehold, for his own use, above 12 calendar months, unless the same came to him within said time by descent, marriage, marriage-settlement, devise, or promotion to a benefice in a church, or by promotion to an office, [*or in respect of any estate which was granted to him fraudulently on purpose to qualify him to vote]: And if any person shall vote contrary to the true intent hereof, he shall forfeit £40. to any candidate for whom such vote shall not have been given, and who shall first sue for the same, to be recovered, with full costs, by action of debt, in any court of record at Westminster: and the proof shall lie upon the defendant. And the 19 Geo. 2. c. 28. Eng. contains the same provision in respect to persons voting in cities or towns, being counties of themselves, in right of freehold estates of the yearly value of 40*s.* The provisions of the Irish election law which are analogous will be presently †mentioned.

*Length of pos-
session of free-
hold required.*

18 Geo. 2. c. 18.
s. 5. Eng.

**vide next page
Fraudulent qua-
lification.*

*Penalty for
voting contrary
to this clause.*

19 Geo. 2. c. 28.
s. 4. Eng.

†*vide post*, p. 30.

*

By

Fraudulent conveyance void, as a qualification for voting.

7 & 8 W. 3. c. 25. s. 7. Eng.

10 Ann. c. 23. s. 1. Eng.

But good against grantor.

* "or citizen or burgess," here added in 35 Geo. 3. c. 29. Ir.

† not in 35 Geo. 3. c. 29. Ir.

‡ "£100." in 35 Geo. 3. c. 29. I.

§ "in manner herein after (s. 75.) directed," in 35 Geo. 3. c. 29. Ir.

13 Geo 2. c. 20. Eng.

35 Geo 3. c. 29 s. 24 & 75. Ir.

Analogous provisions of the law of Ireland.

45 Geo. 3. c. 59. s. 8. I.

s. 9.

Penalty of a termor's attempt to create a freehold.

By the 7 & 8 W. 3. c. 25. s. 7. Eng. all conveyances of any lands, &c. in any county, city, borough, &c. in order to multiply voices, or to split and divide the interest in any houses or lands amongst several persons, to enable them to vote at elections of members, shall be void, and no more than one single voice shall be admitted for one and the same house or tenement. And by the 10 Ann. c. 23. s. 1. Eng. all estates and conveyances made to any person in any fraudulent or collusive manner, to qualify him to give his vote at the election for a knight of the shire,* subject to conditions or agreements to defeat or determine such estate, [†or to reconvey the same,] shall be deemed against those who executed the same as free and absolute, and be holden discharged of all trusts, conditions, clauses of re-entry, powers of revocation, provisos of redemption, or other defeazances, between or with the said parties, or any person in trust for them; and all bonds, covenants, collateral or other securities, contracts or agreements, for the redeeming, revoking, or defeating such estates, or for the restoring or reconveying thereof, or any part thereof, to the party making such conveyance, or any other person in trust for him, shall also be void; and every person who shall make and execute such conveyance, or being privy to such purpose shall devise or prepare the same, as also every person who shall vote by colour thereof, shall forfeit ‡£40. with full costs, to any person who shall sue for the same, [§by action of debt, &c. in any court of record at Westminster.] And the 13 Geo. 2. c. 20. Eng. extends the provision of the 10 Ann. c. 23. s. 1. Eng. to cities and towns which are counties of themselves. The 35 Geo. 3. c. 29. Ir. contains a provision nearly corresponding, the variations being pointed out in the margin. And the 45 Geo. 3. c. 59. I. further provides, (s. 8.) that if any person shall fraudulently and knowingly grant any interest importing to be a freehold, which really is not so, with intent to enable any person to vote, such grant shall be good against the grantor for every purpose but enabling the grantee to vote. And by s. 9. if such grantee shall be possessed only of a term of years therein, and shall demise the same, or any part thereof, for a life or lives, with intent to induce the lessee therein to register such

such

such as a freehold, or to vote as a freeholder thereout, he shall forfeit £.100 to any person who shall sue, &c. in any court of law. The 35 Geo. 3. c. 29. s. 28. Ir. further provides against other fraudulent contrivances to multiply votes, by enacting that no person shall be admitted to vote at any election by virtue of any freehold granted fraudulently, or in exchange for a freehold in any other county, or in consideration of any increase of rent out of any other lands in the same or any other county held by such person from the grantor, though such consideration be not expressed in the deed of grant; which clause is peculiar to the Irish election law.

35 Geo. 3.
c. 29. s. 28. Ir.

No vote out of
freehold fraudu-
lently exchange-
ed, &c.

Annuity and
rent-chargers
right to vote.

3 Geo. 3.
c. 24. Eng.

Certificate en-
tered with clerk
of the peace.

In respect to freeholds which arise out of annuities or rent-charges issuing out of freehold lands or tenements, the 3 Geo. 3. c. 24. Eng. recites that such conveyances were of a private nature, and liable to fraudulent practices, and therefore provides that no person shall vote thereout, if granted before the 1st June 1763, unless a certificate upon oath shall have been entered 12 calendar months at least before the first day of such election, with the clerk of the peace for the county, or with the clerk of the peace, town clerk, or other public officer having the custody of the records, within the city or town where the lands, &c. be, the form of which is thereby prescribed, viz. "I A. B. of———am really and *bona fide* seised
" of an annuity or rent charge for my own use and be-
" nefit, of the clear yearly value of 40s. above all rents
" and charges payable out of the same, wholly issuing
" out of freehold lands tenements or hereditaments be-
" longing to C. D. of———situate lying and being in
" the parish, township, or place, or parishes, townships or
" places, of———in the county of———without any
" trust, agreement, matter, or thing to the contrary not-
" withstanding, and I, or the person or persons under
" whom I claim, was or were seised of the said annuity
" or rent-charge before the first day of June, 1763."
And by s. 2. where any such annuity, &c. shall come to any person by descent, marriage, marriage settlement, devise, or presentation to a benefice in a church, or promotion to an office, within 12 calendar months before the election,

*Certificate when
annuity by
descent, &c.*

s. 3. & 4.

*Annuities
granted subse-
quent to 1st.
June, 1763, to
be registered.*

s. 4.

*Like certificate
of assignment.*

election, a certificate upon oath, or affirmation, is required to be entered with the clerk of the peace before the first day of such election, which certificate is in the same words

as that required by the former section save as to the concluding paragraph which is as follows: "and I became

"seised of the said annuity or rent-charge on the——

"day of———last past by descent or otherwise (as

"the case may happen)" and any rent-charge granted,

or assignment thereof made, subsequent to said period,

is by s. 3. & 4. required to be registered in like manner

12 calendar months before the election, and further that

the memorial thereof shall be wrote on parchment and

directed to such clerk of the peace, &c. and shall be

under the hand and seal of the grantor, and attested by

2 witnesses, one whereof shall be a witness to the exe-

cution of such grant, which witness shall upon oath be-

fore such clerk of the peace, &c. or his deputy, prove

the sealing and delivery of such grant, and the signing

and sealing of such memorial, and which memorial shall

contain the day and year of the date, and the names, ad-

ditions, and abodes of the parties and witnesses, and all

lands, &c. out of which such annuity, &c. issues, and

the parish, &c. where such lands, &c. lie, and every

grant is thereby required at the time of entering the

memorial thereof, to be produced to such clerk of the

peace, &c. who shall thereon indorse a certificate, men-

tioning the day and year on which such memorial was

entered; and by s. 4, no person shall vote by reason of

an assignment of any such annuity or any part thereof

made before the 1st of June 1763, unless a certificate

of such assignment upon oath, to the purpose above

mentioned with respect to an original annuity or rent

charge, shall have been entered in like manner with the

clerk of the peace, &c. 12 calendar months before the

election; and as to such assignment made after the 1st

day of June 1763, a memorial of such assignment, as

well as of the original grant, is thereby required to be

attested and registered, in the same manner as described

in respect to the memorial of an original grant. As to

grants or assignments made and executed in any place

not

not within 40 miles of the office of the clerk of the peace, &c. it is provided s. 6. that a memorial thereof respectively shall be entered and registered by such clerk of the peace, &c. in case an affidavit sworn or affirmation made before one of the judges at Westminster, or a master in chancery ordinary or extraordinary, be brought with the memorial to the clerk of the peace, &c. wherein one of the witnesses to the execution of such grant or assignment shall swear, that he saw the same executed, and a certificate of the registry to be thereupon given and signed by such clerk of the peace, &c. shall be evidence of the registry of such memorial in all courts of record; by s. 5. the clerks of the peace, &c. of the several counties, &c. and the cities, &c. are required to keep books for entering such certificates and memorials, and their fee for the entry of a certificate is thereby 1s. and of a memorial 2s. and for every search 1s. and they are thereby also authorized and required to give copies of such certificates and memorials, which being attested by them are made evidence in all cases; their fee for such copies is 6d. for every 200 words and so in proportion for any greater number; and they are hereby authorized to administer an oath where an oath is required by this act. By s. 7. they are further required to attend at any election at the request of any candidate, upon receiving reasonable notice, and satisfaction for such attendance; and by s. 8. any such clerk of the peace, &c. if guilty of any wilful neglect, misdemeanor, or fraudulent practice contrary to the intent of this act, forfeits £.100 to any person who will sue, &c. in any court of record at Westminster; but by s. 9. no person shall be liable to any such forfeiture or penalty, unless the prosecution be commenced within 12 months after incurred. The election laws of Ireland contain several clauses in respect to the registry of annuities and rent-charges, which will be found in their proper place.

By the 20 Geo. 3. c. 17. s. 12. Eng. where any woman the widow of any person tenant in fee or in tail, shall be entitled to dower out of the freehold estate of which her husband died seised, and shall intermarry with a second

s. 6.

Grants of annuities, how registered when executed 40 miles from the office of the clerk.

s. 5.

Duty of the clerk of the peace.

s. 7.

s. 8.

Penalty for default.

s. 9.

Limitation.

Husband of dowress entitled to vote. 20 Geo. 3. c. 17. s. 12. Eng.

a second husband, such second husband shall be entitled to vote in respect of such dower, if such dower shall be of the clear yearly value of 40s. although the same has not been set out by metes or bounds, if such husband shall be in the actual receipt of the profits of such dower, and the estate from whence the same issues is rated to the land tax in the name of the actual owner, which is a provision peculiar to the English law.

Copyholders ex-
cluded.

31 Geo. 2.

c. 14. s. 1. Eng.

The 31 Geo. 2. c. 14. s. 1. Eng. enacts that no person who holds his estate by copy of court roll, shall be entitled thereby to vote at the election of any knight of the shire in England or Wales, but every such vote shall be void, and every person voting thereout shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, £.50 to be recovered by him his executors and administrators with full costs, by action of debt in any court of record at Westminster, wherein, &c. and in every such action the proof shall lie on the person against whom the same shall be brought; which provision is also peculiar to the English law.

Voting out of
trust estate or
mortgage.

7 & 8 W. 3.

c. 25. s. 7.

Eng.

The 7 and 8 Wm. 3. c. 25. s. 7. Eng. enacts, that no person shall have any vote in electing members, for any trust estate, or mortgage, unless such trustee or mortgagee be in the actual possession or receipt of the rents or profits thereof; but the mortgagor or *cestui que trust* in possession may vote thereout. The 35 Geo.

35 Geo. 3.

c. 29. s. 27. Ir.

3. c. 29. s. 27. Ir. contains a similar provision; but this clause of the Irish statute further requires, that such trustee or mortgagee shall be so in possession 12 calendar months before the *teste* of the writ.

By the Irish
election law
occupation and
registry of free-
holds required.

35 Geo. 3.

c. 29. s. 26. Ir.

The several clauses of the election law of Ireland which respect the actual occupation and registry of freeholds, are also calculated to prevent occasional and fraudulent votes, and are next for consideration.—The 35 Geo. 3.

c. 29. s. 26. Ir. enacts, that no person shall vote out of any freehold which shall be let or demised to the person from whom he holds or derives the same, or to any person in trust for him, or to his heirs or assigns, if the yearly value be under £.20.;—nor out of any freehold

Freehold not to
be let to lessor,
or for the term
of lessee,

which

which shall be let, &c. to any person for the same term for which he holds the same, if under the yearly value of £.20; and by s. 30. no person shall vote out of a freehold under the yearly value of £.20, unless it shall have been in his actual occupation, either by his residing thereon, or tilling or grazing the same to the amount of 40s. yearly value thereof, at the time of his registering the same, and also for 6 successive calendar months between the date of such registry and the *teste* of the writ; unless such freehold shall have come to him by devise, descent, marriage, or marriage-settlement, and was demised at the time it so came, and continues at the time of such election to be held under him by virtue of such demise.—The 45 Geo. 3. c. 59. s. 1. I. (which recites the 35 Geo. 3. 29. Ir. and by s. 7. confirms all the provisions, clauses, conditions, regulations, and penalties of said recited act with respect to freeholds under £.20 not thereby altered or repealed,) further provides, that from *the passing of this act, every person who shall register a freehold under the yearly value of £.20 not arising from a rent-charge, shall, at a sessions of the peace for the county, &c. wherein his freehold lies, held 12 months previous to the *teste* of the writ, produce in open court, the deed, lease, or instrument under which his freehold arises, and take and subscribe the following oath or affirmation.—“I A. B. of———
 “in the county of———(or of the county of the
 “city or town of———*as the case may be*) do
 “swear (or if a quaker affirm) that I am a freeholder
 “of the county of———and that I have a freehold
 “therein, arising from (an house or houses, land or both,
 “or other hereditaments *as the case may be*) of the clear
 “yearly value of 40s. at the least) above all charges
 “payable out of the same, lying and being at———
 “(naming the townland or townlands, or other denomina-
 “tion by which the place is generally known, and barony
 “or half-barony, or baronies or half-baronies wherein it is
 “situate

s. 30.

*Actual occupa-
tion.**Exception.*45 Geo. 3. c. 59.
s. 1. & 7. I.*Registry of free-
holds under
£20.**Lease produced.**Oath of a free-
holder upon re-
gistering.*

* 27th June 1805—but by s. 12. a special exception is made as to freeholds registered before 1st August 1805, in cases of elections, the writs for holding which shall bear date before the 29th Sept. 1809.

“situate) in this county, (and if in a city or town, or
 “county of a city or town, naming the same, and the
 “street and square, row, alley, lane, or place), and that
 “the said freehold does not arise from a rent-charge,
 “and that the same arises by virtue of the deed, lease,
 “or instrument which I now produce, bearing date
 “the——day of——in the year——for
 “the life and lives of A. B. and C. D. (or in case
 “the said freehold be not for life or lives, then stating
 “the nature of his tenure as the case may be) at the
 “yearly rent of——and that I am in the actual
 “occupation thereof, by residing thereon, or by til-
 “ling, or by grazing, or by both tilling and grazing,
 “(as the case may be) to the amount of at least 40s.
 “yearly value thereof; and that the said freehold is not
 “set, or agreed to be set, to the person or persons who
 “executed the said deed, lease, or instrument, or to the
 “heirs or assigns of such person or persons, or to any
 “one in trust for him, her, or them, nor do I intend to
 “set the same to such person or persons, or any of
 “them; and that I have not agreed to set it for the term
 “for which I hold it, nor have I procured it fraudulently
 “or in exchange for a freehold in any other county.—
 “So help me God.”—And if the freehold shall not arise
 by virtue of a deed, &c. then the same shall be de-
 scribed in the oath, &c. according to the true state
 and nature of the tenure; in which case the words in
 the foregoing oath importing that the same arises by
 virtue of a deed, &c. shall be omitted, and such descrip-
 tion inserted in the place; and by s. 3. every deed, &c.
 produced by any person making the affidavit, &c. afore-
 said, shall be indorsed at the time, in open court, by the
 acting clerk of the peace, with his name and the day
 of the month and year; and the clerk of the peace shall
 compare such deed, &c. with the affidavit of registry, and
 shall within 10 days from the date thereof, enter in the
 registry book the date thereof, the names of the parties,
 and the names of the life or lives for which the same is
 held; and by s. 4. from the 29th September, 1809, no
 person shall be admitted to vote out of a freehold under the

s. 3.

*Lease, &c. in-
 dorsed by clerk
 of peace.*

s. 4.

the clear yearly value of £.20 who shall not have so registered 12 calendar months before the *teste* of the writ. Time of registering such freeholds
 The 35 Geo. 3. c. 29. Ir. contains a provision, s. 32. that 35 Geo. 3. c. 29. s. 32. Ir.
 if the freehold to be registered be under the yearly value of £.20—and shall have come by descent, devise, marriage, or marriage-settlement, and was demised at the time it so came, and continues to be so held under such demise, Oath where freehold by descent, &c.
 the words in the oath or affirmation “and that I am in
 “the actual occupation thereof by residing thereon, or
 “by tilling or grazing to the amount of 40s. yearly value thereof” may be omitted, and the following words substituted, “and that the said freehold came to me by
 “descent, devise, marriage, or marriage-settlement (*as the case may be*) and was demised at the time it so came
 “to me, and still continues to be held under such demise;” which provision it seems by virtue of the
 45 Geo. 3. c. 53. s. 7. I. to be applied and extended to the registries under this imperial statute. The 37 Geo. 3. c. 47. s. 4. Ir. has provided in the case of any freehold coming by descent, devise, marriage, or marriage-settlement, that such shall be registered 6 months previous to the *teste* of the writ; but it seems questionable whether this provision, so far as respects freeholds under the yearly value of £20, has not been altered by the above clause of the 45 Geo. 3. c. 59. s. 4.—The 37 Geo. 3. c. 47. s. 17. Ir. also provides that the registry of any freehold situated in any county of a city, or county of a town, in which the denominations of town lands or baronies are not in use, shall be good and effectual, although the affidavit of registry does not name any town-land, barony, or half-barony, in which such freehold is situated, and the oath as framed by the 45 Geo. 3. c. 59. I. is accordingly adapted to freeholds so situated. Time of registering such freeholds.
Registry of freeholds in counties of cities or towns.

The oath prescribed by the 37 Geo. 3. c. 47. s. 1. Ir. for persons seised of freeholds not consisting of rent-charges, who shall desire to register them as being of the value of £.50 or £.20, is in the words following:—“I———of———in the county of———or of the town or city of———(*as the case may be*) do swear (or if a quaker do affirm) that I am a freeholder of———
Registry of £.20 & £.50 freeholders.
 37 Geo. 3. c. 47. s. 1. Ir.

“ and that I have a freehold therein arising from a house
 “ or houses, and land, or both, or other hereditaments (as
 “ *the case may be*) of the clear yearly value of £.20 or
 “ £. 50. (*as the case may be*) above all charges payable
 “ out of the same, lying and being at———(naming
 “ *the parish or parishes, or the town-land or town-lands,*
 “ *and barony or half-baronies wherein it is situated,*
 “ (*which words town-land or town-lands, barony or ba-*
 “ *ronies of———need not be named if the freehold*
 “ *be in the county of a town or city*) in this county,
 “ and that the said freehold does not arise from a rent-
 “ charge, nor have I procured it fraudulently, nor has
 “ it been granted fraudulently to me, or in exchange for
 “ a freehold in any other county.” And no freehold of
 £.50 (or £.20) registered since the passing of the 35 Geo. 3.
 c. 29. Ir. shall be deemed to be unduly registered on
 account of the omission of these words in the oath pre-
 scribed by 35 Geo. 3. c. 29. Ir. “ * and that I am in the
 “ actual occupation thereof by residing thereon, or by
 “ tilling or grazing, to the amount at least of 40s. yearly
 “ value thereof; and that the said freehold is not set,
 “ or agreed to be set, nor do I intend to set the same to
 “ the person or persons from whom I hold it, or to the
 “ heirs or assigns of such person or persons, or to any one
 “ in trust for him, her, or them, and that I have not agreed

37 Geo. 3. c. 47. s. 2. Ir. “ to set it for the term for which I hold it.”—But by s. 2.

When to be re-
gistered one
year,

no person having a freehold of the yearly value of £.50
 or £.20, who shall have set, or agreed to set the same to
 the person from whom he holds it, or to the heirs or assigns
 of such person, or to any one in trust for him, or who
 has set or agreed to set the same, or more thereof than
 shall leave a sufficiency to constitute such freehold, for
 the term for which he holds it, shall vote thereout at any
 election, unless he shall have registered the same one
 year previous to the *teste* of the writ. And in respect to
 such freeholds as shall come by descent, devise, marriage,
 or marriage-settlement, they are by s. 4. of this act required
 to be registered 6 months previous to the *teste* of the writ.

s. 4.
When 6 months,
before *teste* of
writ.

By

* Py 35 Geo. 3. c. 29. s. 31. these words from *and to thereof* shall be
 omitted.

By the 35 Geo. 3. c. 29. s. 31. Ir. every freehold not consisting of a rent-charge, is required to be registered within 8 years preceding the *teste* of the writ, at some sessions of the peace held 6 months at the least previous to the said *teste*, in the county, &c. where such freehold lies: (and by s. 33. where any person shall desire to register the same freehold at any subsequent time, all the words in the oath above prescribed for the registry of such freehold, after the word *rent-charge*, shall be omitted, and the following words inserted: "and that I registered the said freehold on the——day of——"
 " (naming the day, month and year when the affidavit of the
 " registry was delivered to the acting clerk of the peace;")
 but it is provided s. 37. that when any person shall have registered as a £.50 freeholder according to the directions of this statute s. 36,* such registry shall be deemed a sufficient registry to enable him to vote, although it shall not have been made within 8 years previous to the *teste* of the writ.

Registry to be
within 8 years.
35 Geo. 3. c. 29.
s. 31. Ir.

s. 33.

Re-registry.

s. 37.

Exception as to
50l. Freeholders
* Vide post.
Pages 37-8.

The oath prescribed by the 35 Geo. 3. c. 29. s. 34. Ir. upon the registry of freeholds arising from rent-charges, is in the words following: "I———of
 " ——in the county of———or the town or city
 " of———(as the case may be) do swear (or if a
 " quaker affirm) that I am a freeholder of the county of
 " ——and that I have a freehold therein of the clear
 " yearly value of £.20 a year at the least, above all
 " charges payable out of the same, consisting of a rent-
 " charge granted by deed, bearing date the——day
 " of———in the year———on the lands of——
 " (naming the lands mentioned in such deed, and the ba-
 " rony or baronies, or half-barony or half-baronies wherein
 " the same lie) and that I am in the possession thereof
 " to the clear amount of £.20 yearly value thereof, and
 " am entitled to receive the same as it becomes due,"
 which oath is thereby required to be taken in open court at some sessions of the peace held 12 months previous to the *teste* of the writ, and such registry to be within 8 years preceding the *teste* of the writ; but this oath is altered in respect to rent charges which shall not have been granted by deed, the 37 Geo. 3. c. 47. s. 16. Ir.

Registry of
rent charges.
35 Geo. 3. c. 29.
s. 34. Ir.

When register-
ed.

37 Geo. 3. c. 47.
s. 16. Ir.

having provided that in such case the words “ granted by
“ deed bearing date the——day of——in the year
“ ——” may be omitted, and the particulars of the

35Geo. 3. c. 29. s. 25. Ir. title shall be inserted in the room thereof. By 35 Geo. 3.

c. 29. s. 25. Ir. no person shall vote by virtue of any freehold arising from any rent charge unless it be of the clear yearly value of £.20, nor unless he shall have been in possession for one year, and entitled to receive one years rent and profit thereof before the *teste* of the writ;

37Geo. 3. c. 47. s. 4. Ir. and by 37 Geo. 3. c. 47. s. 4. Ir. such freehold though it shall have come by descent, devise, marriage, or marriage-

settlement, shall be registered one year previous to the *teste* of the writ.

35Geo. 3. c. 29. s. 51. Ir. It is a provision of the 35 Geo. 3. c. 29. s. 51. Ir. which applies to every description of freehold, that no public or

No public tax a charge. parliamentary tax, county, church, or parish cess, or rate, or any cess on any town land, or division of any parish or barony, shall be deemed a charge payable out of any freehold estate within the meaning of this act, or any of the oaths or affirmations therein.

Ecclesiastics need not register. 35Geo. 3. c. 29. s. 40. Ir. By the 35 Geo. 3. c. 29. s. 40. Ir. no rector, vicar or curate shall be obliged to register his freehold arising from his rectory, vicarage, curacy, or other ecclesiastical preferment.

Place of registry. 35Geo. 3. c. 29. s. 45. Ir. With respect to the place of such registries, by the several clauses already referred to the oaths are directed to be taken in open court at some sessions of the peace; and the 35 Geo. 3. c. 29. s. 45. Ir. enacts that the general or quarter sessions may be adjourned from time to time, to be held either at any usual place of sessions, or

Sessions. at any market town within the county, and that every such sessions, and every such adjournment thereof, or adjournment of any adjournment, shall be deemed a sessions within the meaning of this act, but that no special sessions held for any purpose for the militia, or for licencing persons to sell ale, beer, or spirituous liquors, shall be deemed a session for registering freeholders; and the 37

37Geo. 3. c. 47. s. 9. Ir. Geo. 3. c. 47. s. 9. Ir. with reference to this clause, defines a market town to be any town for the holding of a market, in which his majesty's letters patent have been or shall be granted, or wherein markets have been held by prescription

tion

tion, whether markets shall be held therein or not; and this act s. 10. Ir. enacts that all sessions or adjournments thereof, or adjournments of adjournments, shall be deemed good and valid, although no sheriff or sub-sheriff shall have attended thereat; and by s. 11. the registry of any freehold shall not be impeached for any irregularity in the holding or adjourning of any sessions, from whence the sessions at which such freehold shall have been registered, shall have been adjourned, either directly or by any adjournment of adjournments, provided such latter sessions shall have been duly and regularly held in all other respects. The 45 Geo. 3. c. 59. s. 13. I. also provides that every adjournment of a sessions of the peace, and every adjournment of an adjournment, shall be deemed a sessions of the peace, and in case there shall have been no adjournment of such sessions, or no adjournment of an adjournment, and that such sessions shall in that case lapse, a sessions shall be holden, at which the clerk of the peace or his deputy shall attend, for the purpose of registering freeholders, the first *Monday* in the next month, at the place where the last general sessions of the peace shall have been held for that purpose, and every adjournment of every such sessions, to any city or market-town within the county, shall be deemed to be a sessions within the meaning of the 35 Geo. 3. c. 29. Ir. or of this act. The 35 Geo. 3. c. 29. s. 35. & 36. Ir. and the 45 Geo. 3. c. 59. s. 2. I. respectively enact, that every oath or affirmation made and subscribed at any sessions of the peace, as thereby required, shall be read aloud in open court, and be signed by two of the justices presiding there, and shall be then delivered by the court to the clerk of the peace, to be filed and kept amongst the records of the court. But the 37 Geo. 3. c. 47. Ir. contains a clause, s. 15. enacting and declaring that no person shall be deemed unduly registered, on account of the affidavit for such registry not being on stamped paper, or on account of such affidavit not having been read aloud in open court. It is a provision of the 35 Geo. 3. c. 29. s. 36. Ir. that when the freehold, whether consisting of a rent-charge

or

s. 10.

*Adjournment
of sessions.*

s. 11.

45 Geo. 3. c. 59.
s. 13. I.*Lapse of ses-
sions provided
for.*35 Geo. 3. c. 29.
s. 35.-6. Ir.
45 Geo. 3. c. 59.
s. 2. I.*Registry oaths
signed by two
justices, &c.*37 Geo. 3. c. 47.
s. 15. Ir.*Stamps not ne-
cessary.*35 Geo. 3. c. 29.
s. 36. Ir.

*£.50 free-
holders may take
the registry
oath in Dublin
or at the assizes.*

*37 Geo. 3. c. 47.
s. 8. Ir.*

*Officers in army
or militia may
take oaths where
quartered.*

*Duty of clerk
of the peace.*

*35 Geo. 3. c. 29.
s. 41. Ir.*

or not, shall be of the clear yearly value of £.50, and the freeholder shall take and subscribe the proper oath upon registering said freehold, inserting therein the words "fifty pounds" in place of the words "forty shillings" or "twenty pounds," in any of the courts of K. B. C. B. or Exc. in the city of Dublin, or at any assizes, and the same shall be subscribed by one of the judges of such courts, or the judge of assize, such oath, &c. may be produced at any sessions of the peace as aforesaid, held in the county, &c. where such freehold lies, and when read aloud there in open court, shall be signed by two of the justices then presiding there, and shall then be delivered by the court to the acting clerk of the peace, to be filed and kept amongst the records of such county, &c. And by the 37 Geo. 3. c. 47. s. 8. Ir. if any person seised of a freehold, whether consisting of a rent-charge or not, shall be on actual service, either in the army or militia, out of the county, &c. where such freehold lies, and shall take the oath for registering such freehold, at any sessions of the peace, or adjournment thereof, held in the county, &c. in which he shall be quartered or stationed, stating therein the regiment, battalion, troop or company to which he belongs, such affidavit shall be subscribed by two justices of the peace presiding thereat, and countersigned by the clerk of the peace for such county, &c. who shall certify that the corps in which he serves is quartered or stationed therein, and such oath, &c. so subscribed and countersigned, may be produced at any session of the peace, or adjournment thereof, or at any adjournment of any adjournment, held in the county, &c. where such freehold lies, and when read aloud in open court, shall be signed by two of the justices presiding there, and shall be delivered to the clerk of the peace, to be filed and kept amongst the records of the county, but such affidavit, to entitle such person to vote, must be so filed the same length of time previous to the *teste* of the writ, as is required for the registry of such freeholds.

With respect to the duty of the clerk of the peace, the 35 Geo. 3. c. 29. s. 41. Ir. further provides, that every clerk
of

of the peace shall give, to every person immediately on the registry of his freehold, if he shall demand it, a certificate signed by himself, certifying such person having duly registered the same, and reciting his oath or affirmation exactly therein, under a penalty of £.5 for every neglect or refusal. The fee by this clause of this act was but 3d, but the 37 Geo. 3. c. 47. s. 7. Ir. enacts ^{37 Geo. 3. c. 47. Ir.} that there shall be allowed to any acting clerk of the peace for providing and preparing an affidavit and certificate of registry, if required so to do, the sum of 1s. and that any clerk of the peace, attorney, or other person who shall demand, receive, or take more than said fee, shall for every such offence forfeit £.20, to any person who shall sue for the same in such manner as is provided by the 35 Geo. 3. c. 29. s. 75. Ir. And by the 35 Geo. 3. c. 29. s. 41. Ir. every such certificate when signed in open court by two justices, and countersigned by the acting clerk of the peace, shall ^{35 Geo. 3. c. 29. s. 41. Ir.} be of equal authenticity with the original oath, &c. in case the same shall be lost or mislaid; and by s. 42. the acting clerk of the peace is further required, during every sessions, to enter into a book in alphabetical order according to the surnames of the persons registered, the substance of every such oath, &c. delivered to him in the following form:

Free-holders' names.	Place of abode.	Place and nature of freehold.	Parish, &c. where freehold is situate.	Barony or half barony where freehold is situate.	Value.	Date of registry.	Affidavit or affirmation where and when made.

Schedule.

s. 42.

And to enter the same, in like alphabetical order and form, into separate books, one for each barony or half-barony, according to the barony or half-barony, in which such freehold shall be sworn or affirmed to be; which book he shall attend with at every election for a knight of the shire, and deliver in court to the sheriff, previous to the commencement of the poll, making oath at the same time before a justice, that all the entries in the said books.

Barony Books.

37 Geo. 3. c. 47.
s. 6. Ir.

*Penalties for
defaults of clerks
of the peace.*

35 Geo. 3. c. 29.
s. 43. Ir.

*Copies of regis-
tries.*

s. 44.

*Penalty for de-
fault of clerk of
the peace.*

40 Geo. 3. c. 80.
s. 6. Ir.

books are truly and exactly made according to the direc-
tions of this act. And by the 37 Geo. 3. c. 47. s. 6. Ir.
if any clerk of the peace for any county, county of a
city, or county of a town, shall omit or neglect to deli-
ver in court to the sheriff, previous to the commence-
ment of a poll, the books of registry as required by the
35 Geo. 3. c. 29, or shall omit to make oath respecting
same, as thereby also required, such clerk of the peace
shall forfeit, for every book so omitted to be delivered,
the sum of £.500; one half to the person suing for it,
and the other half to such use as the grand jury thereof
shall at any subsequent assizes direct. By the 35 Geo. 3.
c. 29. s. 43. Ir. every clerk of the peace shall, within
10 days after every sessions, deliver to the treasurer of
the county a true copy of every entry of registry by him
made at such sessions, which copy shall be kept by the
said treasurer amongst the accounts of the said county;
and that at the request of any freeholder of said county,
the clerk of the peace, or treasurer, shall, within 10 days
from such request, deliver a true copy of the registry of
all the freeholders which shall have been registered in
such county at the rate of 3*d.* for every 100 persons
names contained in said copy. And by s. 44. if any
clerk of the peace shall omit to give the copies hereby
required, within the time limited, to the treasurer of the
county, he shall forfeit for every such offence £.100,
and be incapable of serving as clerk of the peace for any
county; and if he shall neglect or refuse to attend at any
sessions whereat freeholders may be registered by virtue
of this act, or shall omit to give copies of the registry
or any poll-book lodged with him within a reasonable
time after demand, he shall forfeit £.50 to any person
suing for the same. And by the 40 G. 3. c. 80. s. 6. Ir.
(which appears to have superseded the other parts of this
clause of the 35 Geo. 3.) if any clerk of the peace shall omit
or neglect to keep any of the books of registry in the man-
ner prescribed by law, or to file any affidavit or affirmation
delivered to him by the court to be filed, he shall forfeit
£.50* to any freeholder who shall sue, by action, &c. in
any court of record. And if any clerk of the peace shall
destroy,

* The penalty is £.100 by 35 Geo. 3. c. 29. s. 44. Ir.

destroy, or wilfully or negligently permit to be destroyed, or shall maliciously, fraudulently, corruptly, or wilfully make or permit to be made any alteration, erasure, obliteration, or interlineation in any such book of registry, or neglect to attend by himself or his deputy, at any election for any county, town, or city, with all the books of the registry of the freeholders, and the affidavits on which the same are founded, and to remain there during the whole of such election, he shall be guilty of a misdemeanor, and be imprisoned for 3 years, or suffer such other punishment as the court shall think fit, and be for ever incapable of holding the office of clerk of the peace. The 45 Geo. 3. c. 59. s. 11. I. also enacts,

45 Geo. 3. c. 59.
s. 11. I.

that the several clerks of the peace shall, from time to time, as directed by the 35 Geo. 3. c. 29. Ir. give to every freeholder who shall require the same, a full, true, and correct return of the names of such persons as shall register their freeholds according to the directions of this act, and of the 35 Geo. 3. c. 29., and shall certify at the foot thereof that the said return so made is true and correct, according to the following form of schedule:

Form of clerk of
the peace's copies
or returns of re-
gistries.

Name of free- holder and re- sidence.	Name of land- lord and re- sidence.	Value of free- hold.	De- scrip- tion.	Situa- tion.	Barony or half- barony.	Names of life or other tenure.	Rent.	Date of Registry.

Schedule.

For the better securing the performance of the duties directed by this or any act to be performed by the clerk of the peace, or his deputy, in respect to the registry of freeholds, this act provides, s. 10. that the several clerks of the peace of the several counties of Ireland shall, at the general quarter-sessions of the peace, or adjournment thereof, next after the passing of this act, or next after his appointment, take and subscribe the oath following: "I A. B. clerk or deputy clerk of the peace for the county of———(as the case may be) do swear that I will faithfully and honestly, and without favour or affection, perform and discharge the several duties directed to be performed by the
" clerks

s. 10.

Oath of clerk of
the peace.

“ clerks and deputy-clerks of the peace, by an act passed
 “ in the parliament of Ireland in the 35th year of the
 “ reign of his present Majesty, intituled, “ *An act for re-*
 “ *gulating the election of members to serve in parlia-*
 “ *ment, and for repealing the several acts therein men-*
 “ *tioned,*” and by an act passed in the 45th year of his
 “ present Majesty’s reign, intituled, * (*here set forth the*
 “ *title of this act*) and that I will not demand or receive
 “ any fee or fees, for discharging any of the said duties,
 “ which I am not entitled to by law:” so help me God—
 which oath the said clerks, &c. are required to deliver
 to the treasurer of the county, to preserve amongst the
 records of the county.

Election of ci-
tizens and bur-
gesses.

19Geo. 2. c. 28.
 s. 4. Eng.

Freeholders in
counties of ci-
ties, &c.

s. 5.

† Vide ante,
 Pages 22-5-6.

Next as to such cities and towns in England as are coun-
 ties of themselves, the 19 Geo. 2. c. 28. s. 4. Eng.
 enacts, that no person shall vote in the election of a
 member for any such city, &c. in which persons have a
 right to vote in respect of land, &c. of the yearly value
 of 40s. unless such person shall have a freehold estate in
 such city, &c. of the clear yearly value of 40s. above all
 rents and charges payable out of the same; and shall
 have been in the actual possession, or in receipt of the
 rents and profits thereof, for his own use, above 12 ca-
 lendar months, except the same came to him within that
 time by descent, marriage, marriage-settlement, devise,
 or promotion to any benefice in a church, or by promo-
 tion to an office; and no person shall vote in right of
 any freehold estate granted to him fraudulently on pur-
 pose to qualify him to give his vote, and the penalty for
 voting contrary to the true intent hereof is £.40; By s. 5.
 no public or parliamentary tax, church or parish rate or
 duty, or any other tax, rate, or assessment within such
 cities, &c. shall be deemed to be any charge payable out
 of any freehold estate within the meaning of this act;
 which several provisions are similar to those of the † 18
 Geo. 2. c. 18. s. 5. in respect to freeholders in counties
 at large. The clause of this statute 19 Geo. 2. 28. s. 3.
 Eng.

* An act for amending an act passed in the parliament of Ireland in the
 35th year of his present Majesty, for regulating the election of members to
 serve in parliament, so far as relates to freeholds under the yearly value of
 £.20; and for making further and other regulations relating thereto.

Eng. which requires freeholds in counties of cities, &c. to be assessed to some land tax aid, has been already stated, *ante* p. 24. The clauses of the 35 Geo 3. c. 29. Ir. 37 Geo. 3. c. 47. Ir. 40 Geo. 3. c. 80. Ir. and 45 Geo. 3. c. 59. I. which have been already abridged, provide as well in respect to freeholders in counties of cities and towns, as in counties at large.

The statutes which regard the elective franchise of freemen in cities and boroughs are next in order. The 3 Geo. 3. c. 15. s. 1. Eng. enacts, that no person shall vote as a freeman at any election of members for any city, town, port, or borough, in England, &c. unless such person shall have been admitted to his freedom 12 calendar months before the first day of the election; and every person who shall vote as a freeman, not being so qualified, shall forfeit £100. to any person who shall sue for the same, and such vote shall be void: But by s. 2. nothing herein shall extend to any person entitled to his freedom by birth, marriage, or servitude, according to the custom of such city, &c. By s. 3. if any mayor or other officer of any corporation, or other person, shall wilfully and fraudulently antedate, or cause to be antedated, any admission of any freeman, such mayor, &c. shall forfeit £500. to him who shall sue for the same. And by s. 4. the mayor, bailiff, sheriff, town-clerk, or officer of any corporation, having the custody or power over the records of the same, shall, upon the demand of any candidate, or his agent, or any 2 freemen, on payment of 1s, permit such candidate, &c. between 9 in the morning and 3 in the afternoon, at any time before and within one month after any such election, to inspect the books and papers wherein the admission of freemen shall be entered, and to have copies or minutes of the admission of so many freemen as such candidate, &c. shall think fit, upon paying to such officer a reasonable charge for writing the same; and such books, &c. shall, if demanded by such candidate, &c. be produced by such mayor, &c. at any election, and be referred to in case any dispute shall arise touching the right of any person to give his vote; and if such mayor, &c. shall refuse to such candidate, &c. the inspection of such books,

Freemen to be admitted 12 months before election.

3 Geo 3. c. 15. s. 1. Eng.

s. 2.

Proviso.

s. 3.

Penalty of antedating admission.

s. 4.

Books, &c. of admission of freemen to be open to inspection of candidates, &c.

Copies to be given.

Books, &c. to be produced at election.

Penalty for default.

s. 5. & 6.

How and when recovered.

s. 7.

Act proclaimed.

s. 8.

London and Norwich excepted.

35 Geo. 3. c. 29. s. 29. Ir.

Freemen to be admitted 6 calendar months before teste of writ.

s. 73.

Candidate, &c. to be permitted to inspect entry of admission.

And to take copies.

Books to be produced.

Penalty for default.

Voters in right of inhabitancy.

26 Geo. 3. c. 100. s. 1. Eng.

books, or to have copies or minutes thereof, or shall refuse or neglect to produce such books, &c. at any election, if demanded and paid for as aforesaid, such mayor, &c. shall forfeit £100. to him who shall sue for the same. By s. 5. the penalties in this act shall be recovered, with full costs, by action of debt, &c. in any court of record at Westminster: Provided (s. 6.) that the prosecution be commenced within a year. By s. 7. the returning officer shall read, (or cause, &c.) openly, this act at the time of the election of members for cities, &c. where the right of election is in the whole or in part in freemen, immediately after reading the 2 Geo. 2. c. 25. Eng. against bribery. By s. 8. this act shall not extend to London or Norwich. And the 35 Geo. 3. c. 29. Ir. in a similar manner provides, (s. 29.) that no person shall vote as a freeman at any election of a member, &c. whose freedom shall not have come to him by service, birth-right, or marriage, unless he shall have been admitted to his freedom, or his freedom shall have been granted to him, 6 calendar months before the *teste* of the writ. And by s. 73. any mayor or other officer of any corporation shall, upon the demand of any candidate, on payment of 2s. 6d. permit such candidate, agent, or freeman, between the hours of 12 at noon, and 3 in the afternoon, at any time before and within one month after such election, to inspect the books and papers wherein the admission of freemen shall be entered, and to have copies or minutes of the admission of so many freemen as such candidate, &c. shall think fit, upon payment of 2s. 6d. for every admission; and such books shall, if demanded by such candidate, &c. be produced by such mayor, &c. and if such mayor, &c. shall refuse such candidate, &c. the inspection of such books, &c. at any election, if demanded and paid for as aforesaid, he shall forfeit £50. to him who shall sue for the same as in s. 75 & 78. *post*.

The 26 Geo. 3. c. 100. Eng. enacts, that no person shall be admitted to vote at elections for cities and boroughs in England and Wales, as an inhabitant paying scot and lot, as an inhabitant house-holder, house-keeper, and pot-waller, legally settled, or as an inhabitant house-holder, house-keeper, and pot-waller, or as an inhabitant householder

householder resiant, or as an inhabitant of such city or borough, unless he shall have been actually and *bona fide* an inhabitant, &c. within such city, &c. 6 calendar months previous to the day of the election; and if any person shall vote contrary to this act, his vote shall be void, and he shall forfeit £.20 to any person who shall sue for the same by action of debt at Westminster; and in every such action the proof of inhabitancy shall lie upon the person sued, provided such action be commenced within 6 calendar months after the cause of action accrued; but this act is not to extend to any person acquiring the possession of any house in any city, &c. by descent, devise, marriage, or marriage-settlement, or promotion to any office or benefice;—nor by s. 2. to any other description of persons who may claim to vote at such elections by any other title than as above, or by any other superadded qualification. In order the better to prevent perjury and occasional votes, the 35 Geo. 3. c. 29. s. 63. Ir. also provides, that no person shall be suffered to vote at any election of members, in right of being an inhabitant, without having been registered 12 calendar months before the *teste* of the writ, as therein mentioned, thereby referring to section 55, which enacts that every resident inhabitant claiming a right to vote as being an inhabitant of a borough, where the right of voting is in the inhabitants, or in the inhabitants and others, shall at some quarter-sessions, or adjournment thereof, in open court, before the justices of the county wherein such borough lies, take the following oath or affirmation. “ I A. B. do swear (or *if a quaker* “ do affirm) that I am a resident inhabitant of—— “ and householder in the borough of——in the “ county of——and that my house is situated in “——“ (*here naming the street, lane, alley, row, or* “ *place*) and that my neighbours are——and—— “ and that I have resided in said house for 6 calendar “ months last past, and that I am not an inmate or “ lodger with any other person in the said borough, but “ am really and truly a resident inhabitant of, and house- “ keeper in the said borough, and am answerable for “ payment

s. 2.

35 Geo. 3. c. 29.
s. 63. Ir.
*Inhabitants of
boroughs to be
registered.*

s. 55.

Oath.

“ payment of the usual customary taxes and cesses in
 “ said borough, as a resident householder therein, which
 “ shall or may be legally demanded of me, and that my
 “ said house, exclusive of my land annexed to or let
 “ with it, except the ground whereon my house (with its
 “ offices and back or other yard) stand, is, to the best
 “ of my knowledge and belief, worth the sum of £.5
 “ yearly, and that I believe the same may be let for
 “ said sum of £.5 yearly to a responsible tenant, and
 “ that I am, to the best of my knowledge and belief, of
 the age of 21 years and upwards.” So help me God—
 which oath, &c. shall be taken by every such inhabitant,
 in all cases in which he shall be required to register his
 residence; and by s. 56. when any inhabitant of such
 borough shall desire to have his residence registered, he
 shall swear or affirm the aforesaid affidavit or affirmation,
 which shall be then read aloud in open court, and the
 person so registering shall sign the same, or affix his
 mark thereto, before 2 witnesses, who shall also sign the
 same, and the court shall deliver it to the acting clerk of
 the peace, who shall immediately affix the paper contain-
 ing the affidavit or affirmation, in a book to be by him
 kept for that purpose, and then the court shall sign it, and
 date it according to the date of the month and year;
 and by s. 57. the names of the persons making such af-
 fidavits shall be alphabetically arranged in an index at
 the end of the same book, and the page where the af-
 fidavit of the said inhabitant may be found, and such in-
 habitants names shall be so entered immediately after
 the corresponding affidavit, &c. shall have been entered
 in the registry book, without the intervention of any
 other business; for the inserting which affidavit, &c.
 entry or registry, and indorsing the same, 6*d*. fee shall
 be paid to the acting clerk of the peace. By s. 58. the
 said book shall be kept by the clerk of the peace amongst
 the records of the county, and be preserved without ad-
 dition or alteration, from one quarter session to another,
 neither writing in the same, nor permitting any other
 to write therein, but the same shall be open to the in-
 spection of any registered inhabitant of such borough,

at

s. 56.

*Forms to be ob-
served there-
upon.*

s. 57.

*Names alpha-
betical in clerks
book.*

s. 58.

*Books kept by
clerk of the peace
open to inspec-
tion.*

at any time between the hours of 12 and 2 o'clock in the day time, when such inhabitant shall require it, upon his giving 24 hours notice, except only on sundays and the greater feasts, he paying for the same 1s. for each inspection, but being debarred the use of pen and ink during the time; if however any person having or claiming a vote in such borough, shall require of the clerk of the peace to furnish him with a copy of the registry book, or any part thereof, he shall furnish such voter, within a reasonable time, with a true written copy thereof, charging for the same at the rate of 2d. for every 4 inhabitants so registered, contained in said copy including the index; and the clerk of the peace is thereby also required to furnish any person having or claiming to have a vote, with a copy of the index or any part thereof, within 8 days after demand, charging for the same at the rate of 1d. for every 10 names. By s. 59. the acting clerk of the peace on the last day of every quarter sessions, shall insert a true copy of such entries or registries, as he shall have made during the course of the said quarter sessions, with an index thereto, in a book exactly similar to his own, to be kept by the church wardens of the parish or parishes wherein the borough lies, or by one of them, to be by them carried to every quarter sessions, and there intrusted to the acting clerk of the peace for that purpose on the last day of each quarter sessions, and at no other time; and the church wardens shall preserve the said book without alteration, not writing in it themselves, nor permitting any other person to write therein, except the clerk of the peace as aforesaid. By s. 61. at every quarter session held next after the 1st day of August in every year, for any county wherein there is situated any borough or part of any borough, wherein the right of voting is vested in the inhabitants in general, or in the inhabitants and others, the justices are required to adjourn the same to some convenient day, within 3 weeks from the holding of such sessions, to some convenient place in such borough, for the purpose of there registering the names of such persons claiming a right to vote in such boroughs, as shall desire to be registered; and

s. 59.

*Book kept by
Church wardens,*

s. 61.

*Adjournment
of sessions for
registry.*

s. 63.

Registry a qualification for voting as inhabitants.

and by s. 63. no person claiming to vote in right of being an inhabitant only, shall vote for any member, when a right of voting is vested in the inhabitants in general, or inhabitants and others, who shall not appear to have been first registered in said books, or one of them, in the manner above prescribed (by s. 55.) 12 calendar months before the time of holding such election; but

s. 64.

Oath where the borough in two counties.

this act provides, s. 64. that when any such borough shall be situate in two different counties, every inhabitant in whom the right of voting is vested, may in the oath, &c. prescribed to be taken at the time of registering, or in the oath which he by s. 63. may be called upon to take at any election, substitute the words "resident inhabitant of that part of the borough of——— which lieth in the county of" for the words "resident inhabitant of the borough of——— in the county of"

s. 65.

Penalty for negligence of clerk of the peace.

By s. 65. if any such inhabitant of such borough shall find that the acting clerk of the peace has wilfully or negligently acted in disobedience of this act, by not registering his residence as thereby directed, having been thereunto duly required, and by not giving to the church-wardens of said borough, a copy of the registry book in manner aforesaid, or by erasing, tearing out, or designedly making the same or any part thereof illegible, or designedly or through neglect suffering any person to do so, such inhabitant shall recover from the acting clerk of the peace, by civil bill, the sum of £. 20, process being served 12 days inclusive before the 1st day of the assizes; and in order that the recovery of such penalties

s. 66.

Certificate of registry.

may be the more easy, it is provided s. 66. that the acting clerk of the peace, upon receipt of 6d. as aforesaid, shall deliver to the inhabitant a certificate signed by the court, and countersigned by himself, of his being duly registered, which certificate when proved, shall be sufficient evidence upon any civil bill for the aforesaid penalty; and by s. 67, if the registry book to be kept by the clerk of the peace, and the copy thereof to be kept by the church-wardens, shall both be proved upon oath, before the returning officer of the borough, to have been lost, destroyed, or withheld, or so defaced

s. 67.

that

that the affidavits shall be illegible, either previous to or during the election, in such case any of the said certificates when proved shall be sufficient evidence upon the election, that the inhabitant producing the same has been duly registered. By s. 68. any person (not except-

s. 68.

ing the clerk of the peace or church-warden) who shall steal, destroy, or maliciously alter the said registry books, or either of them, or negligently or wilfully suffer the same to be done, shall suffer 3 years imprisonment. It is also provided by s. 69. that such church-

Stealing or altering, &c. registry books.

s. 69.

wardens as shall receive the registry-book from the clerk of the peace upon the holding of any election, shall return the same to the clerk of the peace or his order, immediately upon being thereunto required; and such person

Delivery of registry book by churchwardens, &c.

in said office who shall have the other of said books in his possession at the expiration of his office, shall deliver the same to his successor, immediately upon being by him thereunto required, or within 10 days after the expiration of said office if not sooner required; and by s. 70.

s. 70.

any person who shall unlawfully detain, or refuse to deliver up said books, or either of them, as aforesaid, shall

Penalties for not delivering such books.

forfeit £.10 for every day he shall unlawfully detain the same, to be recovered by civil bill before the judges of assize in any county where such offence shall be committed; and shall also, upon conviction of such offence before the judges of assize of such county, suffer one months imprisonment for every day he shall so detain the

same; it is further enacted, s. 71., that the churchwardens in such parishes as aforesaid, in case of any neglect or refusal to comply with the several matters required of them, shall forfeit £.100, to be recovered by any person who shall sue for the same in any court of record.

s. 71.

It is a provision which is common to the law of both countries, and applying to elections in general, whether for counties, cities, or boroughs, that no person shall be admitted to vote at any election of a member or members to serve in parliament, who is under the age of 21 years; a clause to this effect being contained in the 7 & 8 W. 3. c. 25. s. 8. Eng. and 35 Geo. 3. c. 29. s. 25. Ir.

*Minors incapacitated to vote.
7 & 8 W. 3.
25. s. 8. Eng.
35 Geo. 3. c. 29.
s. 25. Ir.*

Officers of the
revenue prohi-
bited to vote.

22Geo. 3. c. 41.
Eng.

By the 22 Geo. 3. c. 41. Eng. no commissioner, collector, supervisor, gauger, or other person concerned or employed in the excise; nor any commissioner, collector, comptroller, searcher, or other officer, &c. of the customs; nor any commissioner, officer, or other person concerned, &c. in collecting or managing the duties on stamped vellum, parchment and paper, nor any person appointed by the commissioners of stamps; nor any commissioner, or other person employed in collecting, &c. any of the duties on salt; nor any surveyor, collector, comptroller, inspector, or other officer or person employed in collecting, &c. the duties on windows or houses, nor any postmaster, postmaster-general, or his deputy, or any person employed under him in collecting, &c. the revenue of the post office, nor any captain, master, or mate of any ship, packet or vessel employed by the post master general, in conveying the mail to and from foreign ports, shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron, to sit in parliament for any county, stewartry, city, borough, or cinque port, or for choosing any delegate in whom the right of electing members to serve in parliament for Scotland is vested; and if any person so disqualified shall vote, during the time he shall hold, or within 12 calendar months after he shall cease to hold, any of said offices, such vote shall be void, and such person shall forfeit £.100, one moiety to the informer, and the other to be paid to the treasurer of the county, riding, or division where the offence shall be committed in England, or to the clerk of the justices of the peace of the county or stewartry in Scotland, and to be applied to such purposes as the justices at the next quarter sessions for such county, &c. shall think fit; to be recovered by any person by action of debt, &c. in any court of record at Westminster, or by summary complaint before the court of sessions in Scotland; and the person convicted on such suit, shall be thereby disabled from ever holding any office or place of trust under the crown; but by s. 5. such prosecution must be commenced within 12 months after such penalty shall

shall be incurred. By s. 2. this act does not extend to the commissioners of the land tax or other persons acting by their appointment; and by s. 3. offices then held or usually granted by letters patent for any estate of inheritance or freehold are also excepted.

s. 2.

s. 3.

And by the 43 Geo. 3. c. 25. s. 1. I. no commissioner, collector, surveyor, supervisor, gauger, or other person employed in the excise in Ireland; nor any commissioner, collector, surveyor, comptroller, searcher, or other person employed in the customs in Ireland; nor any surveyor, collector, comptroller, inspector, or other person employed by the commissioners of the revenue in Ireland, in the collecting or managing, &c. any of the duties, taxes or impositions paid or levied under the direction of such commissioners; nor any commissioner or other person employed in collecting, &c. the duties on stamped vellum, parchment and paper in Ireland, nor any person appointed by the last mentioned commissioners for distributing of stamps in Ireland; nor any postmaster-general or his deputy, or any person employed by him in collecting, &c. the revenue of the post office in Ireland, nor any captain, master or mate of any ship or other vessel employed by such postmaster-general in conveying the mail from and to Ireland, to or from Great Britain or other place, shall be capable of giving his vote in any election for the choice of any representative in parliament for any county, &c. in Ireland; and if any person so incapable of voting shall give his vote during the time he shall hold, or within 12 calendar months after he shall cease to hold, any of said offices; such vote shall be void, and such offender shall forfeit £.100 Irish currency—one moiety to the informer, and the other to be paid to the treasurer of the county, &c. in Ireland where such offence shall be committed, to be applied to such charitable purposes within such county, &c. as the justices at the next quarter sessions for such county, &c. shall think fit, to be recovered within (by s. 4.) 12 calendar months after such penalty shall be incurred, by action of debt, &c. by any person who shall sue for the same, in any court of record in Dublin. But by s. 2. this act is not to extend

*Officers of the
revenue in Ire-
land, disquali-
fied.*

43 Geo. 3.
c. 25. s. 1. I.

s. 4.

s. 2.

to any office *then* held, or usually granted to be held, by letters patent for any estate of inheritance or freehold.

*Undue influence
of Officers pro-
hibited.*

5 W. & M. c. 20.
s. 48. Eng.

“To the end that the great duties of excise, and the powers given for collecting the same, may not be employed for the influencing of elections of members to serve in parliament, which elections ought, by the constitution of this government, to be free and uncorrupt,” it is enacted by the 5 W. & M. c. 20. s. 48. Eng. that no collector, supervisor, gauger, or other officer or person employed in the excise, shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any knight, citizen, burgess, or baron to serve in parliament; and every person offending therein shall forfeit £.100, one moiety to the informer, the other moiety to the poor, &c. to be recovered by any person that shall sue &c. at Westminster; and every person convict on any such suit shall become disabled to bear any office relating to the duty of excise, or any other office or place of trust under the crown.

12 and 13 W. 3.
c. 10. s. 91. Eng.

And by the 12 & 13 W. 3. c. 10. s. 91. Eng. no commissioner, collector, comptroller, searcher, or other officer or person concerned in the customs, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any knight of the shire, citizen, burgess, or baron, upon pain of forfeiting £.100, one moiety to the informer, and the other to the poor, &c. to be recovered by any person that shall sue &c. at Westminster. And by the 10 Ann. c. 19. s. 182. Eng.

10 Ann. c. 19.
s. 182. Eng.

any commissioner, officer, or other person concerned in the collecting or managing any of the duties granted by this act, who shall by word, message, or writing, or in other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for any knight of the shire, commissioner, citizen, burgess, or baron, shall forfeit £.100, one moiety to the informer, and the other to the poor of the parish, to be recovered by any person that shall sue, &c. at Westminster, or in the Court of Exchequer in Scotland; and shall be disabled

disabled from bearing any office or place of trust under the crown; which provisions are peculiar to the law of England.

§ 6.

VI. As to the qualifications of persons to be elected members of the house of commons, it is one of the provisions of the Act of Settlement, 12 & 13 W. 3. c. 2. s. 3. Eng. that no person born out of the kingdom of England, Scotland, or Ireland, or the dominions thereunto belonging, although he be naturalized, or made a denizen, except such as are born of English parents, shall be capable to be a member of either house of parliament.

Qualifications of persons to be elected members, &c.

12 & 13 W. 3. c. 2. s. 3. Eng.

Aliens, &c. excluded.

And the 19 & 20 Geo. 3. c. 29. s. 2. Ir. which is an act for naturalizing such foreign merchants as shall settle in this kingdom, (and explained or amended by the 23 & 24 Geo. 3. c. 38. & 36 Geo. 3. c. 48) also provides, that no person naturalized by this act shall be enabled to serve in parliament.

19 & 20 Geo. 3. c. 29. s. 2. Ir.
23 & 24 Geo. 3. c. 38. Ir.
36 Geo. 3. c. 48. Ir.

The 7 and 8 W. 3. c. 25. s. 8. Eng. enacts, that no person shall be capable of being elected to serve in parliament, who is not of the age of 21 years, and every return of a person under that age shall be void; and if any such minor shall sit and vote in parliament, he shall incur such penalties and forfeitures, as if he had presumed to sit and vote without being chosen or returned.—The 35 Geo. 3. c. 29. Ir. contains a corresponding provision, (s. 81.) and the 37 Geo. 3. c. 47. s. 20. Ir. also provides, that every election or return of any person to serve in parliament who shall be under the age of 21 years shall be void; and that if it shall be determined, by any committee of the house of commons who shall try any petition presented against any such election or return, that such person was under the age of 21 years on the day of such election, a new writ shall forthwith issue for the election of a person in his place.

Minors excluded.

7 & 8 W. 3. c. 25. s. 8. Eng.

35 Geo. 3. c. 29. s. 81. Ir.
37 Geo. 3. c. 47. s. 20. Ir.

The 41 Geo. 3. c. 63. U. K. which is an act to remove doubts respecting the eligibility of persons in holy orders to sit in the house of commons, enacts, s. 1. that no person having been ordained to the office of priest or deacon; or being a minister of the church of Scotland, shall be capable of being elected to serve in parliament as a member of the house of commons; and by s. 2. if any

Ecclesiastics excluded.

41 Geo. 3. c. 63. s. 1. U. K.

s. 2.

any such person shall be elected, &c. such election and return shall be void; and this act further provides, that if any person, being elected to serve in parliament as a member of the house of commons, shall after his election be ordained to the office of priest, or deacon, or become a minister of the church of Scotland, the seat of such person shall immediately become void; and if any such person shall in any of the aforesaid cases presume to sit or vote as

Penalty for sitting or voting.

a member, &c. he shall forfeit £.500 for every day in which he shall sit or vote in said house, to any person who shall sue for the same in any of his Majesty's courts at Westminster, to be recovered with full costs of suit by action of debt, &c.; and every person against whom any such penalty shall be recovered shall be from thenceforth incapable of taking, holding, or enjoying any benefice, living, or promotion ecclesiastical, or any office of honour or profit under the crown; but by s. 3. all prosecutions under this act must be commenced within 12 calendar months after the forfeiture shall be incurred.

Time limited for prosecuting.

The proof of the celebration of divine service, according to the rites of the church of England, or of the church of Scotland, in any church or chapel consecrated or set apart for public worship, shall by s. 4. be *prima facie* evidence of the fact, of such person having been ordained to the office of a priest or a deacon, or of his being a minister of the church of Scotland, within the meaning of this act.

s. 4.

Evidence on such prosecution.

Certain placemen and pensioners excluded.

5 W. & M. c. 7. s. 57. Eng.

Farmers of the revenue, &c.

11 & 12 W. 3. c. 2. s. 150. Eng.

Commissioners of excise, &c.

With respect to placemen and pensioners, it is provided by the 5 W. & M. c. 7. s. 57. Eng. that no member of the house of commons shall at any time be concerned, directly or indirectly, or any other in trust for him, in the farming, collecting, or managing any of the sums of money, duties, or other aids granted by this act, (viz. duties on salt, &c.) or to be granted by any other act of parliament, except the commissioners of the treasury, and the officers and commissioners for managing the customs and excise, not exceeding the number then in office; and the 11 & 12 W. 3. c. 2. s. 150. Eng. further enacts, that no member of the house of commons, during the time of his being a member, shall be capable of being a commissioner or farmer of the duty of excise

cise upon beer, ale, and other liquors; or of being a commissioner for determining appeals concerning the said duty; or controuling or auditing the accounts of the said duty; or of holding or enjoying in his own name, or in the name of any other person in trust for him, or for his use and benefit, or of executing by himself or his deputy any office, place, or employment touching or concerning the farming, collecting, or managing the said duties of excise; and by s. 151, if any member of the house of commons, during the time of his being a member, shall by himself, or his deputy, or any other in trust for him, take or execute any of said offices, such person shall be incapable of sitting, voting, or acting as a member of said house. The 12 & 13 W. 3. c. 10. Eng. contains similar provisions, (s. 89. & 90,) in respect to offices concerning the farming, collecting, or managing the customs. The 6 Ann. c. 7. s. 25. Eng. in like manner enacts, that no person who shall have in his own name, or in the name of any other in trust for him, any new office or place of profit whatsoever under the crown, created or erected since the 20th October 1705, nor any person who shall be a commissioner or sub-commissioner of prizes, secretary or receiver of the prizes, nor any comptroller of the accounts of the army, nor any commissioner of transports, nor commissioner of the sick and wounded, nor any agent for any regiment, nor any commissioner for wine-licences, nor any governor or deputy-governor of any of the plantations, nor any commissioner of the navy employed in any of the out-ports, nor any person having any pension from the crown *during pleasure*, shall be capable of being elected, or of sitting or voting as a member of the house of commons; and by s. 26. if any member shall accept of any office of profit from the crown, during such time as he shall continue a member, his election shall be void, and a new writ shall issue for a new election; but such person shall be capable of being again elected. By s. 27. no greater number of commissioners shall be made for the execution of any office than have been employed in the execution of such office before the first day of this parliament:

s. 151.

*Seat vacated.*12 & 13 W. 3.
c. 10. s. 89 & 90.
Eng.*Farmers, &c. of
customs.*6 Ann c. 7.
s. 25. Eng.*Certain commis-
sioners excluded.**Pensioners dur-
ing pleasure ex-
cluded.*

s. 26.

*Accepting office
of profit vacates
seat; but such
person may be
re-elected.*

s. 27.

*Number of com-
missioners li-
mited.*

- s. 28. *Commission in the army or navy excepted.* ment: but by s. 28. this act is not to extend to such members, being officers in the navy or army, as shall receive any new commissions therein respectively: and by s. 29. if any person declared by this act incapable to sit or vote, shall be returned for any county, &c. such election and return shall be void; and if any person so disabled shall sit or vote as a member, he shall forfeit £. 500, to be recovered by such person as shall sue for the same in England by action of debt, &c. The 1 Geo. 1. st. 2. c. 56. Eng. has extended the provision of the 6 Ann. c. 7. in respect to pensions, by enacting, that no person having any pension from the crown *for any number of years*, either in his own name, or in the name of any other in trust for him, shall be capable of being elected a member, &c. or of sitting or voting as such; and by s. 2. if any person who shall have such pension at the time of his being elected, or while he shall continue to be a member, shall sit or vote in the house of commons, he shall forfeit £. 20 for every day he shall so sit and vote, to such person as shall sue for the same in any court at Westminster-hall, to be recovered with full costs of suit by action of debt, &c. And the 15 Geo. 2. c. 22. s. 1. & 2. Eng. prohibits, under the same penalty, any commissioner of the revenue in Ireland, or any commissioner of the navy or victualling-offices, or any deputies or clerks in any of said offices, or in the offices following, viz. of lord high-treasurer, or the commissioners of the treasury; or of the auditor, tellers, or chancellor of the exchequer; or of the lord high admiral or commissioners of the admiralty; or of the paymaster of the army or navy; or of the principal secretaries of state; or of the commissioners of the salt, stamps, appeals, wine licences, hackney-coaches, or hawkers and pedlars; and also prohibits any person having any office civil or military, within the island of Minorca, or in Gibraltar, other than officers having commissions in any regiment there, from sitting or voting, &c. and in like manner also declares their elections void; but this act, s. 3. excepts the treasurer or comptroller of the navy, the secretaries of the treasury, the secretary of the chancellor of the exchequer,
- Penalty of disabled person sitting.*
- 1 Geo. 1. st. 2. c. 56. Eng.
- Pensioners for years excluded.*
- s. 2.
- Penalty for sitting.*
- 15 Geo. 2. c. 22. s. 1. & 2. Eng.
- Certain place-men excluded.*
- s. 3.
- Certain offices excepted.*

exchequer, the secretaries of the admiralty, the under secretary to any of the principal secretaries of state, and the deputy paymaster of the army; and is also declared not to exclude any person having any office or employment for life, or for so long as he shall behave himself well in his office. The 22 Geo. 3. c. 45. s. 1. Eng. enacts that any person who shall directly or indirectly undertake, execute, hold, or enjoy, in the whole or in part, any contract, agreement, or commission made or entered into with, under, or from the commissioners of the treasury, or of the navy or victualling office, or with the master-general or board of ordnance, or with any of such commissioners, or with any other person on account of the public service, or shall knowingly furnish in pursuance of such agreement, &c. any money to be remitted abroad, or any wares to be used in the service of the public, shall be incapable of being elected, or of sitting or voting as a member of the house of commons, during the time that he shall execute, &c. any such contract, &c. or any part thereof, or enjoy any benefit from the same; and by s. 2. the election and return of every such person shall be void; and by s. 9. if any person so declared incapable of being elected shall sit or vote as a member, &c. he shall forfeit £.500 for every day he shall sit or vote, to any person who shall sue, &c. in the king's courts at Westminster, to be recovered with full costs by action of debt, &c. or by summary complaint before the court of sessions in Scotland; and every person against whom such penalty shall be recovered, shall be incapable of taking or holding any contract, &c. for the public service, or any share thereof, or any benefit from the same; by s. 2. the seat of any member, who shall enter into, accept of, undertake or execute, in the whole or in part, any such contract, is also declared void; and this act s. 10. provides, that in every such contract, &c. there shall be inserted an express condition, that no member of the house of commons shall be admitted to any share or part of such contract, &c. or to any benefit to arise therefrom,

And offices for life or during good behaviour.

22 Geo. 3. c. 45. s. 1. Eng.

Contractors ineligible.

s. 2.

s. 9.

Forfeiture for sitting or voting.

s. 2.

Accepting any such contract vacates seat.

s. 10.

Every such contract to contain a condition for excluding members of parliament.

therefrom, and in case any person having any such contract, &c. shall admit any member, &c. to any share thereof, or to receive any benefit thereby, he shall forfeit the sum of £.500; to be recovered with full costs in any court of record at Westminster by any person who shall sue by action of debt, &c. or by summary complaint before the court of session in Scotland; but all prosecutions under this act must, by s. 11. be commenced within 12 calendar months after such penalties shall be incurred.

s. 3. This act by s. 3. shall not extend to any contract, &c. made, entered into, or accepted by any incorporated trading company in its corporate capacity, nor to any company *then* existing, and consisting of more than 10 persons, where such contract, &c. shall be entered into for the general benefit of such company, nor by s. 6. to any person on whom the completion of any contract, &c. shall devolve by descent or limitation, or by marriage, or as devisee, legatee, executor or administrator, until 12 calendar months after he shall have been in possession.

30 Geo. 3. c. 10. s. 7. Eng. By the 30 Geo. 3. c. 10. s. 7. Eng. the speaker of the house of commons for the time being, shall not hold or enjoy in his own name, or in the name of any person in trust for him, or for his benefit, any office or place of profit under the crown during pleasure.

Speaker not to hold any office.

Acts respecting British and Irish Parliament, applicable to Imperial Parliament.

41 Geo. 3. c. 52. s. 1. U. K.

s. 2.

s. 3.

In respect to Ireland, the 41 Geo. 3. c. 52. s. 1. U. K. enacts that all persons disabled from, or incapable of being elected, or sitting and voting in the house of commons of Great Britain, shall be also incapable of being elected or of sitting or voting in the house of commons of the united kingdom; and by s. 2. all persons incapable of being elected, or of sitting, &c. in the house of commons of Ireland, shall be still also incapable of being elected, or of sitting in the house of commons of the united kingdom, as members for Ireland; and it is provided s. 3. that persons so disabled, by British statutes, shall not by this act be enabled to sit, &c. for any county, &c. in Ireland, nor shall this act be construed to enable persons, so disabled, &c. by any act of the parliament of Ireland from sitting, &c. in the house of commons of Ireland, to sit, &c. for any county, &c. in Great Britain;

tain; by s. 4. no person who shall by himself or his deputy, or any other in trust for him, or for his benefit, take hold, enjoy, or execute, or continue to hold, &c. any of the offices or places of profit following, in or for Ireland, shall be capable of being elected, or of sitting or voting as a member of the house of commons of the united kingdom; that is to say, commissioners of customs, excise, or stamps; or persons concerned directly or indirectly, in the farming, collecting, or managing any of the duties or other aids granted, or to be granted by any act to the crown, (except the commissioners of the treasury, and their secretary;) commissioners for determining appeals concerning the duties of customs, excise or stamps; or for controuling or auditing the account of the said duties (except the auditor general of the exchequer); commissioners of imprest accounts; agents for any regiments; and such persons as shall contract with the commissioners of the treasury in Ireland, or with any other person on account of the public service in Ireland, or who shall knowingly furnish money to be remitted in or to be used in the service of the public, while they shall hold or enjoy any such contract &c. (except the members of any incorporated trading company *then* existing in Ireland, and consisting of more than 10 persons, so far as relates to any contract, &c. made, or to be made by such company in its corporate capacity for the benefit of such company;) and any deputies or clerks in any of the offices following, viz. of the lord high treasurer, or the commissioners of the treasury, (except the secretaries of the treasury); or of the auditor, tellers, or chancellor of the exchequer, (except the secretary of the chancellor of the exchequer,); or of the commissioners of stamps; or of the commissioners of appeals; and this act, s. 5. in like manner disqualifies any person who shall have in his own name, or in the name of any person in trust for him, any office or place of profit, by the nomination or appointment of the lord lieutenant, or by any appointment subject to the approbation of the lord lieutenant, lords justices or other chief governor of Ireland, created since the passing

s. 4.

*Certain Officers
in Ireland ex-
cluded.*

s. 5.

s. 6.
Penalties of sitting, &c.

Officers for life, or during good behaviour, excepted;

but commissioners of imprest accounts, &c. excluded.

s. 9.
Seats vacated by accepting of offices.

33 Geo. 3. c. 41.
Ir.

s. 1.
Pensioners during pleasure, or for years, excluded; and certain officers.

passing of the 33 Geo. 3. c. 41. Ir. from being elected or sitting or voting as a member; and by s. 6. if any person so disabled by this act shall be nevertheless elected, such election or return shall be void; and if such person shall notwithstanding sit or vote as a member, he shall incur such penalties and forfeitures as are imposed by the several acts in Great Britain and Ireland respectively; and if he shall be disabled by reason of holding or accepting any office, &c. enumerated in this act, he shall forfeit £.500 for every day he shall so sit or vote, to be recovered by such person as shall sue for the same in any court of record in any part of the united kingdom, by action of debt, &c. but by s. 8. this act shall not exclude any person from having any office for life, or so long as he shall behave himself well in his office, (other than the commissioners of imprest accounts, and all persons concerned in the managing, collecting or farming of any duties or aids granted to the crown); and it is also provided, s. 9. that if any member shall accept any office of profit immediately from the crown, or by the nomination, or by any other appointment subject to the approbation, of the lord lieutenant, &c. of Ireland, his seat shall thereupon become vacant, and a writ shall issue for a new election; but such person, if not incapacitated by this act, shall be however capable of being again elected for the place for which he has been member, or for any other place: The 33 Geo. 3. c. 41. Ir. to which this act refers, had enacted that no person who shall have in his own name, or in the name of any person in trust for him, any office or place of profit under the crown, created after this act; nor any person who, or whose wife, shall have a pension during pleasure, or for a term of years; nor any surveyor general, or collector of the revenue appointed by the commissioners of customs or excise, (save only the collectors of the customs and excise in the port of Dublin and in the county of and city of Dublin); nor any of the secretaries, to the commissioners of customs, to the excise, to the commissioners of accounts, to the commissioners of the barracks, to the post-office, or to the board of ordnance; (nor

(nor the paymaster of bounties on corn coming coast-ways to the city of Dublin) shall be capable of being elected, or of sitting or voting as a member of the house of commons; and by s. 2. if any office, which hath been abolished or disused for the space of 5 years before the passing of this act, shall be re-established, or if any additional salary exceeding £.100. per annum shall, after the passing of this act, be added to the salary of any office, or if a salary of £.100. per annum shall be granted to any office to which no salary was *then* granted, every such office shall be deemed a new office within the meaning of this act; but this act s. 3. excepted such persons as should be appointed commissioners to execute the office of high treasurer of Ireland, and their secretary*, (which power of appointing such commissioners was given to the crown by s. 7. of this act) but this act was declared, s. 8. not to extend to any member &c. being an officer in the army, militia, or navy, or who should receive any new or other commission or warrant therein respectively, nor to any person having or accepting an office for life, or during good behaviour; and this act further provides s. 4. that if any member shall accept any office of profit from the crown, while he shall continue a member, his seat shall become vacant, and a writ issue for a new election, but by s. 5. such person shall be capable of being again elected for the same, or any other place; this act as amended by the 38 Geo. 3. c. 36. Ir. contained also provisions similar to those of the *41 Geo. 3. c. 52. s. 5. 6. 8. & 9. but that the penalty was recoverable only in any court of record in Dublin. The 35 Geo. 3. c. 8. s. 30. Ir. provides, that the acceptance of any commission in any regiment or battalion of militia, or in any other corps which his Majesty has directed or may direct to be raised in Ireland, in which none of the officers, except the adjutant or quarter-master, shall, by virtue of their commissions in the said corps, be entitled to half pay or to any rank in the army after the reduction of the said corps, shall not be construed to vacate the seat of any member; and the

35 Geo.

s. 2.

New offices.

s. 3.

Commissioners of the Treasury, &c. excepted.

s. 8.

Commission in the army, &c. excepted.

s. 4.

Accepting office vacates seat;

s. 5.

but such Officers may be re-elected.

38 Geo. 3. c. 36. Ir.

*ante Page 60.

35 Geo. 3. c. 8. s. 30. Ir.

Officers of militia, &c. not excluded.

* Which exception is also contained in the 41 Geo. 3. c. 52. s. 4. Ante page 59.

35 Geo. 3. c. 28.
s. 6. Ir.

Receiver General not excluded.

36 Geo. 3. c. 25.
Ir.

Assistant Barristers excluded.

33 Geo. 3. c. 41.
s. 10. Ir.

Oath of certain Officers.

s. 11.

Oath of Member.

Residence no longer necessary

14 Geo. 3. c. 58.
Eng.

18 Edw. 4. c. 2.
Ir.

35 Geo. 3. c. 28. s. 6. Ir. enacts that the office of receiver general, to be exercised pursuant to the provisions of this act, shall be deemed an old office, and shall not incapacitate the person holding the same from sitting in parliament. It is one of the provisions (s. 3.) of the 36 Geo. 3. c. 25. Ir. that no member of the house of commons shall, during the time of his being a member, be capable of holding the office of assistant barrister.*

As a further security for the freedom and independence of the Irish house of commons, it was provided by the 33 Geo. 3. c. 41. s. 10. Ir. that it should not be lawful for any person who should be appointed to any civil office, or place of profit under the crown, to be created after the passing of this act, the salary and perquisites of which should amount to £200. a year, to execute the duties, or receive the salary or profits of such office, until he should have taken before a baron of the court of exchequer the following oath:—" I A. B. do swear that I have not
" accepted, and will not hold, the office of——— in
" trust, or for the use or benefit, directly, or indirectly,
" of any member of the house of commons;" and the following oath was by s. 11. prescribed to be taken and subscribed by every member at the time of taking his seat:—" I A. B. do swear, that I do not hold in my own
" name, or in the name of any person in trust for me, or for
" my benefit, any pension for years, or during his majesty's
" pleasure, or any office or place of profit under the crown,
" which is rendered by act of parliament incompatible
" with the holding a seat in the house of commons."

It has been already observed, (page 21) that those acts of Henry 5. & Henry 6. E. & I. which required residence as a necessary qualification for persons to be elected members of parliament, were repealed in England by the 14 Geo. 3. c. 58, which recited that those acts had been found by long usage to be unnecessary, and were become obsolete; and in Ireland the 18 Edw. 4. c. 2. Ir. repealed all former laws requiring knights, citizens, or burgesses to be

* By 26 Geo. 3. c. 61. s. 6. Ir. no member of parliament shall be a paving Commissioner in Dublin; and by 48. Geo. 3. c. 140. s. 14. I. no person holding an office under the Police Establishment shall be a member of the House of Commons.

be resident; but the 33 Hen. 8. st. 2. c. 1. Ir. which *Otherwise by 33 Hen. 8. st. 2. c. 1. Ir.* again made this qualification necessary, has not been directly repealed by any statute.

With respect to the qualification for members of the house of commons in respect to rank, or property, the *Qualification of members in respect to property, &c.* 23 Hen. 6. c. 14. s. 3. E. & I. enacts, that the knights of the shires shall be notable knights of the same counties for *23 Hen. 6. c. 14. s. 3. E. & I.* which they shall be chosen, or otherwise such notable esquires, or gentlemen by birth, of the same counties, as shall have estates sufficient to be knights, but by no means of the degree of yeomen; and by the 9 Ann. c. 5. *9 Ann. c. 5. Eng.* Eng. no person shall be capable to sit or vote as a member of the house of commons for any county, &c. in England, &c. who shall not have an estate, of freehold or copyhold, for his own life, or for some greater estate in law or equity, to his own use, in lands, &c. clear of all incumbrances, lying in England, &c. of the annual value of £.600 above reprises, for a knight of the shire, or of £.300 for a citizen, burgess, or baron of the cinque ports; otherwise the election and return of such persons respectively shall be void; but the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified by this act to serve as a knight of the shire, are by s. 2. excepted, and declared *s. 2. & 3.* capable of being elected and returned, and of sitting and voting as members; and by s. 3. this act is not to *Exceptions.* extend to the English universities, who may return members as they had theretofore done; and this act provides, (s. 4.) that no person shall be qualified to sit in the house *s. 4.* of commons by virtue of any mortgage, whereof the equity of redemption is in any other person, unless the mortgagee shall have been in possession of the mortgaged premises for 7 years before the election; every candidate for any county, &c. is required by s. 5. upon the *Mortgage when a qualification.* reasonable request (at the time of the election, or before the day prefixed in the writ of summons for the meeting of parliament) of any other candidate, or any two of the voters at such election, to take the following oath:—
 “ I A. B. do swear that I truly and *bona fide* have such
 “ an estate in law or equity, to and for my own use and
 “ benefit, of or in lands, tenements, or hereditaments

over

Oath of candidate at election for counties.

s. 5.

“ (over and above what will satisfy and clear all incum-
 “ brances that may affect the same) of the annual value
 “ of £. 600 above reprises, as doth qualify me to be
 “ elected and returned to serve as a member for the
 “ county of———according to the tenor and true
 “ meaning of the act of parliament in that behalf; and
 “ that my said lands, tenements, or hereditaments are
 “ lying or being within the parish, township, or precinct
 “ of———or in the several parishes, townships, or
 “ precincts of———in the county of———or in
 “ the several counties of———(as the case may be.)”

s. 6.

For cities, &c.

s. 7.

Oaths how ad-
ministered and
certified.

But by s. 6. in case such candidate is to serve for any
 city, borough, or cinque port, the said oath shall relate
 only to the said value of £. 300, and be taken to the
 same effect, *mutatis mutandis*; and by s. 7. such oaths
 respectively shall be administered by the sheriff or under-
 sheriff for any such county, or by the mayor, bailiff, or
 other officer for any city, &c. to whom it shall belong
 to take the poll or make the return, or by any 2 justices
 of the peace within England, &c. and be by them re-
 spectively certified into Ch. or K. B. within 3 months
 after taking the same, under the penalty of £. 100, one
 moiety to the crown, and the other to such person as
 shall sue for the same, to be recovered with full costs in
 any court of record at Westminster, by action of debt,
 &c.; and if any candidate shall wilfully refuse, upon
 such reasonable request as aforesaid, to take such oath,
 his election and return shall be void. No greater fees
 than 1s. for administering the oath, 2s. for making the
 certificate, and 2s. for receiving and filing the same, shall
 be taken, under the penalty of £. 20, to be recovered and
 divided as aforesaid.—The provisions of this act are ren-

33 Geo. 2. c. 20.
Eng.Account of qua-
lification to be
delivered to clerk
of the house of
commons.

dered more effectual by the 33 Geo. 2. c. 20. Eng. which
 enacts, that every person who shall be elected a member
 of the house of commons, shall, before he shall vote or
 sit during any debate therein, after the speaker is chosen,
 deliver in to the clerk of said house at the table in the
 middle thereof, and whilst the house is sitting, with their
 speaker in the chair, a paper or account, signed by
 every such member, containing the name or names of
 the

the parish, township or precinct, or parishes, &c. and also of the county or counties in which the lands, &c. lie, whereby he makes out his qualification, declaring the same to be of the annual value of £600. above reprises, if a knight of the shire, and of £300. &c. if a citizen, burgess, or baron of the cinque ports, and shall also at the same time take and subscribe the following oath: " I *A. B.* do swear, that I truly and *bona fide* " have such an estate in law or equity, and of such value, to and for my own use and benefit, of or in lands, " tenements, or hereditaments, over and above what will " satisfy and clear all incumbrances that may affect the " same, as doth qualify me to be elected and returned " to serve as a member for the place I am returned for, " according to the tenor and true meaning of the acts of " parliament in that behalf; and that such lands, tenements, or hereditaments, do lie as described in the " paper or account signed by me, and now delivered to " the clerk of the house of commons. So help me " God." And the house of commons is hereby required to administer said oath, after every such person shall have taken the oaths of allegiance, supremacy, and abjuration, at said table; and said oath and subscription shall be entered in a parchment-roll to be provided by the clerk of said house; and the said paper or account, so delivered in to said clerk, shall be filed and carefully kept by him. And by s. 2. if any person shall sit or vote before he shall have delivered in such paper, &c. and taken, &c. such oath, or shall not be so qualified as required by the 9 Ann. c. 5. and this act, his election shall be void, and a new writ shall issue to elect another member in his room. But it is provided (s. 3.) that this act shall not extend to the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified to serve as a knight of the shire, or to the members of the English universities, or to the members for Scotland. The 41 Geo. 3. c. 101. s. 23. U. K. recites those acts (9 Ann. c. 5. & 33 Geo. 2. c. 20.) and enacts, that the latter act shall extend to every person (except as therein excepted) who shall be elected a member of the house of commons of the united kingdom for any county, &c. in

*Oath to be taken
at same time.*

s. 2.

Otherwise election void.

s. 3.

Exceptions.

41 Geo. 3. c. 101.
s. 23. U. K.

Lands, &c. may be in Ireland, &c. England, &c. or in Ireland; and that it shall be sufficient that the lands, &c. whereby such member shall make out

Exception as to Dublin university.

40 Geo. 3. c. 67. Eng.

40 Geo. 3. c. 38. Ir.

his qualification as directed by the 33 Geo. 2. c. 20. shall be either in England, Wales, Berwick upon Tweed, or in Ireland: but this act excepts the university of Dublin.

The 4th article of the act for the union of Great Britain and Ireland, (which is also recited in the 41 Geo. 3. c. 101. s. 23. *supra*) provides, that the qualification, in respect of property of members elected on the part of Ireland, shall be the same as are now provided in cases of elections in England, unless other provision shall be made by act of parliament of the united kingdom.

§. 7.

Issuing, delivery and return of writs and precepts.

7 & 8 W. 3. c. 25. s. 1. Eng.

VII. *As to the manner of proceeding in respect to elections,*

the 7 & 8 W. 3. c. 25. Eng. enacts, that when any new parliament shall be summoned, there shall be 40 days between the *teste* and return of the writ of summons; and the chancellor shall issue writs for the election of members to serve in the same, with as much expedition as may be; and upon the calling any new parliament, as also in the case of any vacancy during the parliament, the writs shall be delivered to the proper officer to whom the execution thereof doth belong, and to no other person; and every such officer, upon the receipt of such writ, shall on the back thereof indorse the day he received the same, and shall forthwith make out his precept to each borough, town corporate, port, or place within his jurisdiction, where any member is to be

* 6 days allowed in the cinque ports by 10 & 11 W. 3. c. 7. s. 2. Eng.

elected, and, within [*3 days] after the receipt of such writ, shall deliver such precept to the proper officer of every such borough, &c.; and every such officer, upon the back of such precept, shall indorse the day of his receipt thereof, in the presence of the party from whom he received such precept. And by s. 2. neither the sheriff, nor his under-sheriff, in any county or city, nor the mayor, &c. or other officer of any borough, &c. to whom the execution of any such writ or precept shall belong, shall give or take any fee or reward for the making out, receipt, delivery, return, or execution of any such writ or precept. The provisions of this act (s. 1 & 3.) in respect to the time and place of holding such elections, which have been amended by the 19 Geo. 2. c. 28. s. 7. Eng.

s. 2.

25 Geo;

25 Geo. 3. c. 84. s. 4. Eng. and 33 Geo. 3. c. 64. Eng. will be presently stated.

And by the 24 Geo. 3. c. 26. s. 2. Eng. the speaker of the house of commons shall, during any recess, whether by prorogation or adjournment, issue his warrant to the clerk of the crown, to make out a new writ for electing a member in the room of any member who shall die, or become a peer of Great-Britain, either during the recess, or previous thereto, as soon as he shall receive notice by a certificate under the hands of 2 members of the house of commons, of the death of such member in the first case; and in the second place, that a writ of summons hath been issued under the great seal, to summon such peer to parliament; for which certificate a form is prescribed by a schedule to this act, viz. “We whose
 “ names are underwritten, being two members of the
 “ house of commons, do hereby certify, that——late
 “ a member of the said house, serving as one of the
 “ knights of the shire for the county of———(or as
 “ the case may be) died upon the———day of———
 “ (or is become a peer of Great-Britain, and that a writ
 “ of summons hath been issued under the great seal of
 “ Great-Britain, to summon him to parliament) (as the
 “ case may be) and we give you this notice, to the in-
 “ tent that you may issue your warrant to the clerk of
 “ the crown, to make out a new writ for the election of
 “ a knight to serve in parliament for the said county of
 “ ———(or as the case may be) in the room of the
 “ said.———Given under our hands, this———day
 “ of———To the speaker of the house of commons.”

Warrant of speaker upon the death or promotion to the peerage of a member.

24 Geo. 3. c. 26. s. 2. Eng.

In case there shall be no speaker of the house of commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions of this act. And by s. 3. the speaker shall forthwith after receiving such certificate, cause notice to be inserted in the London Gazette, and shall not issue his warrant until 14 days after the insertion of such notice; but by s. 4. before the speaker shall issue his warrant for such purpose, the return of the writ (by virtue of which such member de-

s. 3.

s. 4.

ceased or become a peer was elected) must be previously brought into the office of the clerk of the crown, 15 days before the end of the last sitting of the house, immediately preceding the time when such application shall be made to the speaker to give such warrant; nor shall the speaker issue such warrant, unless such application shall be made so long before the then next meeting of the house for the dispatch of business, as that the writ for election may be issued before the day of such next meeting; nor in case such application shall be made with respect to any seat in that house which shall have been vacated in manner above mentioned, by any member against whose election and return a petition was depending, at the time of the last prorogation or adjournment. And this act provides, s. 5. that the speaker shall within a convenient time after he shall be in that office, at the beginning of any parliament, by any instrument under his hand and seal, appoint not more than 7, nor less than 3 members of the house, thereby authorizing them, or one of them, to execute all the powers given to the speaker for issuing such warrants; subject nevertheless to such regulations as herein contained, which appointment shall, notwithstanding the death of the speaker executing the same, or the vacating his seat, continue in force until the dissolution of the parliament.

Appointment of speaker's deputies for such purposes.

s. 6. And by s. 6. whenever the said persons shall by death, or by their seats being vacated, be reduced to less than 3, it shall be lawful for the speaker to make a new appointment in manner aforesaid: and every such appointment shall, by s. 7. be entered in the Journals of the house, and be also published once in the London Gazette, and the instrument of such appointment shall be preserved by the clerk of the house, and a duplicate thereof filed in the office of the clerk of the crown in chancery: but by s. 8. nothing in this act shall give power to any person so appointed, except in the case of there being no speaker, or of his being out of the realm, nor for any longer time than such person shall continue a member of the house. The publisher of the Gazette is required, s. 9. when such notice of the issuing of any warrant

warrant shall be brought to him, to give a receipt for the same, specifying the day and hour when the same was received, and in case more than one such notice shall be brought to him relative to the same election, such publisher shall insert in the Gazette, only the notice first received.

In respect to Ireland, the clause of the representation act, 40 Geo. 3. c. 29. s. 7. Ir. which is incorporated in the act of union, (40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng.) has been already stated,* which authorizes and requires the chancellor of Ireland to cause writs to be issued to the several counties, cities, the college of Dublin, and boroughs in Ireland, for the election of members to serve in the parliament of the united kingdom, either in cases of general elections, or to supply any vacancy arising by death or otherwise. Previous to the union, the 11 Geo. 3. c. 10. Ir. as explained and amended by the 15 and 16 Geo. 3. c. 11. Ir. contained provisions analogous to those of the † 24 Geo. 3. c. 26. s. 2. 3. and 4. Eng. authorizing the speaker of the house of commons to issue his warrant to the clerk of the crown, to make out writs for the choice of members in the room of such as should die, during the recess of parliament for more than 20 days, whether by prorogation, or adjournment, upon the certificate of any two members, by writing under their hands, of the death of such member; and the speaker was thereby required forthwith to cause notices of such death to be inserted in the Dublin Gazette, and at the end of 14 days after such insertion, (exclusive of the day of insertion) to issue his warrant as aforesaid; provided, however, that such death should be so certified to the speaker so long before the actual meeting of the house of commons for the dispatch of business, as that the speaker might be able to insert notice thereof, and of his intention to issue such warrant, 14 days at least before such meeting of the house, and provided also that these acts should not extend to the case of the death of a member against whose election or return a petition had been presented, and was depending at the time of such prorogation or adjournment; a similar certificate of two members

*In Ireland,
Chancellor to
issue writs.*

40 Geo. 3. c. 29.
s. 7. Ir.

*Ante page 21.

11 Geo. 3. c. 10.
Ir.
15 & 16 Geo. 3.
c. 11. Ir.

†Ante page 67.

members was thereby required, in case of any member becoming a peer of Ireland during such recess, a writ of summons having been issued under the great seal of Ireland to summon such member to parliament, and the notice and warrant of the speaker were in the latter case to be subject to the same exceptions and regulations as in the former.

*Place, time, and
mode of election
in England.*

7 & 8 W. 3.
c. 25. s. 3. Eng.

25 Geo. 3. c. 84.
s. 4. Eng.

19 Geo. 2. c. 28.
s. 7. Eng.

Notice thereof.

33 Geo. 3. c. 64.
Eng.

The 7 and 8 W. 3. c. 25. s. 3. Eng. enacts, that upon every election of any knight of the shire, the sheriff shall hold his county court for the election at the most public and usual place of election, and where the same has most usually been for 40 years, and shall there proceed to election; the provision of this act as to the time of holding such election has been altered by the 25 Geo. 3. c. 84. s. 4. Eng. which enacts, that the sheriff, after the receipt of the writ for making an election for knights of the shire, and indorsing on the back thereof the day of receiving the same, shall within 2 days after the receipt thereof, cause proclamation to be made at the place where the election ought to be holden, of a special county court to be there holden for such election only, on any day (sunday excepted) not later from the day of making such proclamation than the 16th, nor sooner than the 10th, and he shall proceed in such election at such court, as if the election was to be held at a county court, or at an adjourned county court; but it is provided that the usual county court or any adjournment thereof shall for all other purposes be held and proceeded on by the sheriff, as if the writ for the election of knights of the shire had not been received. And the 19 Geo. 2. c. 28. s. 7. Eng. enacts, that the sheriff of any city or town in England, being a county of itself, and having a right to elect a member or members by virtue of the writ issuing out of chancery without any precept thereupon, shall forthwith upon the receipt of the writ, cause public notice to be given of the time and place of election, and shall proceed to election thereupon within 8 days after the receipt of the writ, and give 3 days notice thereof, exclusive of the day of the receipt of the writ and of the day of election. The 33 Geo. 3. c. 64. Eng. provides that

that all notices to be given of the time and place of any election of members, &c. shall be publicly given at the usual place or places, within the hours of 8 in the forenoon and 4 in the afternoon, from 25 October to 25 March inclusive, and within the hours of 8 in the forenoon and 6 in the afternoon, from 25 March to 25 October, inclusive, and no other notice shall be valid.

It is enacted by the 3 Edw. 1. c. 5. E. & I. that, upon great forfeiture, no man by force of arms, nor by malice or menacing, shall disturb any man to make free election. And it is declared by the 8th article of the Bill of Rights, that election of members of parliament ought to be free. The 8 Geo. 2. c. 30. Eng. recites the 3 Edw. 1. *supra*, and enacts, that as often as any election of peers to represent the peers of Scotland in parliament, or of any member to serve in parliament, shall be appointed to be made, the secretary at war, or such person as shall officiate in his place, shall, at some convenient time before the day appointed for such election, send orders in writing for the removal of every regiment, troop, or company, or other number of soldiers, quartered or billeted in any place where such election shall be appointed to be made, one day at least before the day appointed for such election, to the distance of 2 miles from such place, and not to make any approach until one day after the poll shall be ended. And by s. 2. in case the secretary of war, or such person as shall officiate in his place, shall neglect to send such orders, and shall be thereof convicted, upon any indictment to be preferred at the next assizes, or sessions of *oyer and terminer*, for the county where such offence shall be committed, or on any information to be exhibited in K. B. within 6 months after such offence, such secretary at war, &c. shall be discharged from his office, and shall be disabled to hold any office or employment, civil or military, in his majesty's service. But by s. 3. this act shall not extend to the city of Westminster, or the borough of Southwark, in respect of the guards of the king, nor to any place where the king, or any of the royal family, shall reside at the time of such election, in respect of such troops only as shall be attendant guards to the king or to any of the royal family,

Elections of members to be free.

3 Edw. 1. c. 5. E. & I.

1 W. & M. st. 2. c. 2. Eng.

8 Geo. 2. c. 30. s. 1. Eng.

Military to be removed before elections.

s. 2.

Duty of secretary of state enforced.

s. 3.

Exception as to places.

s. 4.
*Exception as to
persons.*

s. 5.

Proviso.

*Appointment of
clerk and in-
spectors to take
the poll.*

7 & 8 W. 3.
c. 25. s. 3. Eng.

s. 5.

*No adjournment
without consent.*

25 Geo. 3. c. 84.
s. 1. Eng.

*Poll, when to
commence.*

mily, nor to any castle or fortified place where any garrison is usually kept, in respect to such number of troops only whereof such garrison is composed. And by s. 4.

any officer or soldier who shall have a right to vote at such election is also excepted. And it is provided (s. 5.)

that the secretary at war, &c. shall not be liable to any forfeiture for not sending such order, upon any election on a vacancy, unless notice of making out any new writ shall be given to him by the clerk of the crown; which notice he is required to give with all convenient speed. There is no corresponding statute to this in Ireland.

Next as to the mode of taking the poll: the 7 & 8 W. 3. c. 25. s. 3. Eng. provides, that in case the election be not determined upon the view, but a poll be required, the sheriff or under-sheriff, with such others as shall be deputed by him, shall forthwith proceed to take the poll in some open place or places, and the sheriff or under sheriff, or such as he shall depute, shall appoint such number of clerks as shall seem meet for taking thereof; which clerks shall all take the poll in the presence of the sheriff, &c. and before they begin to take the poll, every clerk shall by the sheriff or under sheriff be sworn, "truly and indifferently to take the same, and to set down the names of each freeholder, and the place of his freehold, and for whom he shall poll, and to poll no freeholder who is not sworn, if required by any candidate;" and the sheriff, &c. shall appoint for each candidate such one person as shall be nominated by such candidate to be inspector of every clerk. And by s. 5.

the sheriff, &c. or such as he shall depute, shall proceed to the polling of the freeholders present, and shall not adjourn the county court to any other place, without the consent of the candidates, nor shall by any unnecessary adjournment protract the election, but shall duly proceed from day to day. But the 25 Geo. 3. c. 84. s. 1. Eng. provides, that every poll demanded at any election in England, &c. shall commence on the day for which the same shall be demanded, or upon the next day at farthest, (unless it be a Sunday,) and then on the day after, and shall be proceeded on from day to day, (Sundays excepted,) until

until finished, so as no poll continue more than 15 days, and if such poll continue until the 15th day, then the same shall be finally closed at or before 3 in the afternoon of the same day; and by s. 3. every returning officer, unless prevented by accident, shall during the poll, on every day, cause the said poll to be kept open for 7 hours, at the least, between 8 in the morning and 8 at night.

When to close finally.

s. 3.

How long to continue each day.

By the 2 Geo. 2. c. 24. s. 3. Eng. every sheriff or other returning officer shall, immediately after reading the writ or precept, take and subscribe the following oath, viz.

2 Geo. 2. c. 24.

s. 3. Eng.

Oath of returning Officer.

“ I, A. B. do solemnly swear, that I have not, directly
 “ or indirectly, received any sum or sums of money,
 “ office, place, or employment, gratuity or reward, or
 “ any bond, bill or note, or any promise or gratuity what-
 “ soever, either by myself or any other person, to my
 “ use or benefit or advantage, for making any return at
 “ the present election of members to serve in parliament,
 “ and that I will return such person or persons, as shall,
 “ to the best of my judgment, appear to me to have the
 “ majority of legal votes.” Which oath any justice of the peace of said county, &c. or in his absence any 3 of the electors shall administer, and such oath shall be entered amongst the records of the sessions of such county, &c.

The 25 Geo. 3. c. 84. s. 7. Eng. recites, that it is expedient that all persons employed as poll-clerks, should take an oath, for the faithful discharge of their office;

25 Geo. 3. c. 84.

s. 7. Eng.

Oath of poll-clerk.

but the same is not at present required or authorized, except in counties and other places for which there are express provisions made by statute, and enacts, that at every election of a member for any city, borough, or place within England, &c. every person whom the returning officer shall retain to act as a poll-clerk, shall, before beginning to take such poll, be sworn by the returning officer truly and indifferently to take the poll, and to set down the name of each voter, and his addition, profession, or trade, and the place of his abode, and for whom he shall poll; and to poll no person who is not sworn or put to

* This clause, so far as it binds Scotland, is repealed by the 16 Geo. 2. c. 11. s. 38. Eng.

to his affirmation, where by this or any other statute, any oath, &c. now is, or hereafter shall be required.

Booths erected.

18 Geo. 2. c. 18.
s. 7. Eng.

The 18 Geo. 2. c. 18. s. 7. Eng. enacts that at every election for a knight of the shire in England and Wales, the sheriff, or in his absence the under-sheriff, or such as he shall depute, shall appoint or erect at the expense of the candidates, such number of booths or places for taking the poll, as any of the candidates shall, 3 days at least before the commencement of the poll, desire, so as the same do not exceed the number of rapes, lathes, wapentakes, wards, or hundreds within the said county, and not exceeding in the whole the number of 15; and affix upon the most public part of each, the name of the rape, &c. for which such booth, &c. is designed; and the sheriff shall appoint a clerk at each booth, &c. to take the poll, (who shall at the expense of the candidates be paid not exceeding one guinea *per* day each clerk) and the sheriff, &c. shall also make out a list for each booth, &c. of all the towns, villages, parishes, and hamlets, lying wholly or in part in the rape, &c. for which every such booth, &c. is designed; and shall, upon request, deliver a copy thereof to any of the candidates, or their agents, taking for each copy 2s.; and by s. 8. no sheriff, under-sheriff, or clerk appointed to take the poll at any of the said booths, &c. shall admit any person to vote for any freehold estate sworn to be at some parish, town, or place, not mentioned in the list so made out for such booth, &c. unless such estate be in some place not mentioned in any of the lists. By s. 9. the sheriff, &c. shall at every such election allow a cheque-book for every poll-book, for each candidate, to be kept by their respective inspectors at every place where the poll shall be taken. The 19 Geo. 2. c. 28. Eng. contains a similar clause (s. 6.) in respect to allowing cheque-books at elections for counties of cities or towns, but does not provide for the erection of booths at such elections. By the 10 Ann. c. 23. s. 5. Eng., in taking the poll the sheriff, or his under-sheriff, and clerks, shall enter not only the place of the elector's freehold, but also the place of his abode, as declared by the elector at giving his vote, and shall also enter *Jurat* against the name

Clerk to each booth.

s. 8.

Lists for each booth.

s. 9.

Cheque-books for candidates.

19 Geo. 2. c. 28.
s. 6. Eng.

10 Ann. c. 23.
s. 5. Eng.

Entry of voters, description, &c.

name of every voter who shall take the oath hereby prescribed (which is however altered by the 18 Geo. 2. c. 18.); and the sheriff or returning officer shall, within 20 days after such election, deliver over upon oath, (which the 2 next justices of the peace, one of whom to be of the quorum, are required to administer) to the clerk of the peace, all the poll-books of such elections without any embezzlement or alteration; and in such counties where there are more than one clerk of the peace, then the original poll books to one of such clerks of the peace, and attested copies thereof to the rest, to be kept amongst the records of the peace.

The election law of Ireland is analogous to that of England in respect to the place, time, and mode of holding elections. The 35 Geo. 3. c. 29. s. 2. Ir. enacts, that elections of knights of the shire shall be holden at the place where the assizes for such county (and in the county of Dublin where the sessions of the peace for said county) were last held previous to such election, on such day as the sheriff shall appoint, not sooner than 10, nor later than 20 days after he shall have received the writ for holding the same; and the sheriff shall then and there proceed to election, and shall not adjourn to any other town or place, nor, without the consent of all the candidates, longer than from day to day, unless a Sunday shall intervene, and then only from Saturday to the next Monday; and shall duly and without delay proceed in taking of the poll from day to day, until all the freeholders, who shall there present themselves, shall be polled: and shall affix on the door of the county courthouse public notice, signed by himself, of the day for holding the election, 10 days at least preceding such day. And by s. 3. the sheriff shall, within 4 days after he shall receive the writ for the election of members for any place within his county, issue his precept and deliver the same to such acting magistrate or officer of such place as made the last return for the same, and such magistrate, &c. shall hold the election thereupon, within 20 days from the day of his receiving the precept, having in the usual public place in such borough caused to be affixed

Place, time, and mode of elections in Ireland.
35 Geo. 3. c. 29. s. 2. Ir.
to be holden at the assize town,
within 20 days after receipt of writ.
No adjournment without consent of candidates.
10 days notice of election.
s. 3.
Precepts to returning officers within 4 days after receipt of writ.
notice

Election in boroughs within 20 days after precept. 4 days notice of election.

s. 4.

s. 9.

Oath of returning officer.

Oath of deputy.

notice under his hand of the time and place of holding such election, 4 days at the least preceding such election; and such sheriff shall accept the return of every such precept from such magistrate or officer only. And by s. 4. the sheriff or sheriffs of a city or town, being a county in itself, shall hold the election within 20 days from the day of receiving the writ, having in the usual place of such city, &c. affixed notice under his hand of the time and place of holding such election, 10 days at least preceding the day of election. And this statute, s. 9. enacts, that every returning officer shall, before he proceeds to take the poll, take and subscribe in open court the following oath, to be administered by a justice of the peace: "I A. B. do swear, that I will honestly, " impartially, and without favour to any candidate, take " the poll at the election, and that I have not directly " or indirectly received, nor will I hereafter directly or " indirectly receive any money, gift, reward, promise, " contract, or security for money or other reward, for " or in respect of the conduct which I shall observe " during the ensuing poll, or the return which I shall " make at the close thereof, except the expenses of " erecting booths, hiring buildings, keeping them in " repair, and the payment of clerks and deputies, and " counsel for my assistance, and that I will return such " person or persons as shall appear, to the best of my " judgment, at the close of the poll, to have the majority " of legal votes."—And every deputy shall also before he proceeds to take the poll, take and subscribe the following oath, in presence of the returning officer, who is thereby empowered and required to administer the same: "I A. B. do swear, that I will honestly, impartially, and without favour to any candidate, take the " poll at this election, and that I have not directly or " indirectly received, nor will I hereafter directly or indirectly receive any money, gift, reward, promise, " contract, or security for money, or other reward, for " or in respect of the conduct I shall observe during the " ensuing poll, and that I will make a fair and true return of all such persons as shall tender their votes before

“ fore me, to be by me taken to the returning officer or
“ officers by whom I am appointed, whenever and as
“ often as I shall be thereunto required by him or them;”
and a memorandum of every of the said oaths being
taken, shall be entered on the poll book.

This act also provides, (s. 5.) that in case the sheriff of *Booths erected.*
any county shall apprehend a contest, or in case any *35 Geo. 3. c. 29,*
candidate shall 3 days previous to the day appointed for *s. 5. lr.*
holding an election, by writing under his hand, require
the sheriff, such sheriff shall erect on some convenient
place in or near the session-house, or place where he shall
hold such election, though such place should happen to
lie in the county of a town or city, so many booths, or
hire so many buildings, as, together with the county
court-house, shall make up so many separate places for
taking the poll as there are baronies or half-baronies in
the county, and shall appropriate one of the said booths,
&c. to each barony or half-barony, the name whereof
he shall cause to be affixed in large legible characters in
some conspicuous part of the outside thereof; and he
shall appoint a clerk for each, and also a deputy for
each, except for the one where he shall himself preside; *Clerk and de-
puty appointed
to each.*
and the expense of every such booth, &c. and of re-
pairing and keeping up the same during the poll, and
the wages of every such deputy and clerk, not exceed-
ing one guinea a day for each, shall be paid jointly by
all the candidates to the sheriff upon demand. And by
s. 7. on every such election for a knight of a shire, every *s. 7.*
freeholder shall be polled only in the booth, &c. appro- *Voters polled in
their proper
booths.*
priated to the barony or half-barony in which his free-
hold is either wholly or in part situated; and every she-
riff may himself take the poll in any of the booths, &c.
appropriated as aforesaid, and during the election change
from one to the other as he shall think fit. And by s. 6. *s. 6.*
in all elections, not being for knights of the shire, the *Booths in cities
&c.*
returning officer shall, upon demand made by any can-
didate in writing under his hand, 3 days at least pre-
vious to the day of holding the election, cause to be
erected in or near the place appointed for holding the
election, as many booths, or hire as many buildings, for
taking

taking the poll as such candidate shall so desire; provided that the number of electors polled on the last or any former election shall have exceeded 200, and that the number of booths or buildings shall not exceed the rate of one place for every 100 electors so polled, &c.; and the returning officer shall appoint a clerk for each place, and a deputy for each, except where he shall preside; and the expenses of such booths, &c. and of repairing and keeping up the same during the poll, and the wages of every such deputy and clerk, not exceeding one guinea a day for each, shall be paid jointly by all the candidates to the returning officer on demand.

37 Geo. 3. c. 47.
s. 12. Ir.

Deputy's conduct in case of disputed votes.

The 37 Geo. 3. c. 47. s. 12. Ir. provides, that in case a question respecting the right of any person claiming to vote shall occur, which a deputy shall not think himself competent to determine, such deputy may thereupon send to the sheriff, who shall take such person's poll, and receive or reject his vote as he shall be qualified or not,* either in the booth, building, or other place where he shall take the poll, or in the booth, &c. appropriated to such deputy, as he shall judge expedient. By the

35 Geo. 3. c. 29.
s. 7. Ir.

Deputies removable.

35 Geo. 3. c. 29. s. 7. Ir. every returning officer may, during every election, remove any deputy, or appoint another in his room, and may change every deputy from one booth, &c. to another, as often as he shall think fit. And by s. 10. every deputy shall, upon notice given to him by the returning officer, each day close his poll book, and deliver in the same immediately to such officer, who shall sum up thereupon the number of votes polled on such day for each candidate, to be read aloud and entered in his poll-book in open court; and if any deputy shall refuse to deliver his poll book when required by the returning officer, or shall continue to take the poll after he shall have been directed by him to stop, and before he shall be again directed by him to proceed, or after his deputation shall be revoked, he shall forfeit £.50. to any person who shall sue for the same, to be recovered as by s. 75. *post*; and every vote admitted by him after such refusal or direction shall be void. But by s. 11. every such removal, and new

Penalty for acting afterwards.

s. 11.

appointment

* This clause is incorrectly printed in the statute.

appointment, of a deputy, and such notice to a deputy to close the poll, and deliver up his book, or to change from one booth or building to another, shall be made publicly, and proclaimed in the place where such deputy shall take the poll, by the returning officer, or some person to be appointed by him for that purpose. Every returning officer, unless prevented by accident or unavoidable necessity (an entry of the nature of which accident, &c. shall be made at large on the poll book and signed by him) shall, by s. 8. of this act, cause the poll to be kept open in his own and every deputy's court, on every day for 7 hours at the least, between 8 in the morning, and 8 at night (Sunday and Christmas day only excepted) from the commencement of the election, until the poll shall be finally closed, unless the consent of all the candidates shall be given for his doing otherwise, every which consent shall be entered on his poll book. And by s. 12. no disturbance, riot, or misbehaviour shall be any excuse to the returning officer for closing the poll, or making a return; but the court shall be thereupon adjourned for some convenient time, and so from time to time, until such disturbance shall have ceased, when such returning officer shall again proceed to take the poll; and every person who shall be convicted by due course of law of having violently, riotously, or outrageously disturbed the court, or otherwise misbehaved, so as forcibly to interrupt the proceeding of the poll, or of having wilfully effaced, obliterated, torn, altered, or destroyed the whole or any part of the poll book of the returning officer, or any deputy, whereon any thing relative to the election shall have been entered, or of having forcibly or fraudulently taken or secreted the same, or any part thereof, or the writ or precept for holding such election, shall be guilty of felony, and be transported for 7 years to some of his Majesty's dominions out of Europe, or be imprisoned for any time not more than 7 years at the discretion of the judge. And by s. 15. if any returning officer or deputy shall unnecessarily and wilfully protract the poll, or be guilty of any wilful and unnecessary delay in taking the same, every such

Notice of such removal.

Poll to be kept open 7 hours.

s. 8.

s. 12.

Poll not closed in case of riot.

s. 15.

Penalty for protracting the poll.

such returning-officer shall forfeit £. 500 to any person who shall sue for the same, as by s. 75. *post*.

Oaths at Elections,

18 Geo. 2. c. 18.
s. 1. Eng.

Freeholder's Oath.

In order to restrain persons not regularly and *bona fide* qualified from voting at elections, the 18 Geo. 2. c. 18. s. 1. Eng. provides that upon every election in England or Wales of any knight of the shire, every freeholder before he is admitted to poll, shall (if required by any of the candidates, or any person having a right to vote), instead of taking the oath required by the 10 Ann, c. 23. first take the oath or affirmation following:—" You shall
 " swear (or being one of the people called Quakers you
 " shall solemnly affirm) that you are a freeholder in the
 " county of——— and have a freehold estate consist-
 " ing of——— (*specifying the nature of such freehold*
 " *estate, whether messuage, land, rent, tithe, or what else;*
 " *and if such freehold estate consists in messuages, lands,*
 " *or tithes, then specifying in whose occupation the same*
 " *are; and if in rent, then specifying the names of the*
 " *owners or possessors of the lands or tenements out of*
 " *which such rent is issuing, or of some or one of them*)
 " lying or being at——— in the county of——— of
 " the clear yearly value of 40s. over and above all rents
 " and charges payable out of or in respect of the same,
 " and that you have been in the actual possession or
 " receipt of the rents and profits thereof, for your own
 " use, above 12 kalendar months, or that the same came
 " to you within the time aforesaid by descent, marriage,
 " marriage settlement, devise, or promotion to a benefice
 " in a church or by promotion to an office, and that such
 " freehold estate has not been granted or made to you
 " fraudulently, on purpose to qualify you to give your
 " vote; and that the place of your abode is at———
 " in——— and that you are 21 years of age as you
 " believe; and that you have not been polled before at
 " this election." Which oath, &c. the sheriff, under-
 sheriff, or such sworn clerk as shall be by him appointed
 for taking the poll, shall administer, and any person taking
 the said oath, &c. who shall thereby commit wilful per-
 jury, or any person who shall unlawfully and corruptly
 procure or suborn any person to take the said oath, &c.

in

in order to be polled, whereby he shall commit such wilful perjury, shall incur the pains and penalties as in 5 Eliz. c. 9. and 2 Geo. 2. c. 25.—And the 19 Geo. 2. c. 28. Eng. contains a similar provision in respect to counties of cities, and counties of towns, the only distinction being in the form of the oath prescribed by the latter, the words lying or being in the “city and county or town and county, (*as the case may be*)” being thereby substituted for the words “lying or being at———” in the “county of———” And the 25 Geo. 3. c. 84. s. 5. Eng. recites that from the various and disputed rights of voting in several cities, boroughs, and other places, a positive oath of qualification cannot be required from the electors; yet to deter unqualified persons from voting, this statute enacts that upon every election within England, &c. in all cases where no oath or affirmation of qualification other than against bribery, or of allegiance, supremacy, and abjuration could *then* be required, every person claiming to vote shall, if required by any candidate, or person having a right to vote, before admitted to poll, take the oath, &c. following:—“I do swear, (*or being a Quaker do affirm*) that my name is A. B. and that I am———(*specifying the addition, profession, or trade of such person*), and that the place of my abode is at———in the county of———(*and if it is a town consisting of more streets than one, specifying what street*), and that I have not before been polled at this election, and that I verily believe myself to be of the full age of 21 years.”—Which oath, &c. the returning officer and his deputies, and poll-clerks, are to administer.

By 7 & 8 W. 3. c. 25. s. 6. Eng. every sheriff, &c. and other officer to whom the execution of any writ or precept shall belong, shall forthwith deliver to such person as shall desire the same, a copy of the poll taken at such election, paying only a reasonable charge for writing the same; and every sheriff, &c. for every wilful offence against this act, shall forfeit to the party aggrieved £. 500, to be recovered by him, or his executors or administrators, with full costs, by action of debt, &c. at Westminster.

*Freeholder's
oaths by law of
Ireland.*

35 Geo. 3. c. 29.
s. 46. Ir.

*Freehold of or
above £20.*

*Oath of Rent-
charger.*

s. 47.

*Alteration where
by descent, &c.*

The 35 Geo. 3. c. 29. s. 46. Ir. enacts, that every person who shall offer to vote as a freeholder shall, before he shall be admitted to poll, declare whether his freehold arises from a rent-charge or not, and if his freehold does not arise from a rent-charge, he shall, if so required by any elector, before he be admitted to poll, take the following oath, where the freehold is registered of or above £.20. yearly value :—" I———of——— in the county of———or of the town or city of———(*as the case may be*) do swear, (*or if a quaker affirm*) that I am a freeholder of this county, and that I have a freehold therein of the clear yearly value of £20 or £50, (*as stated in his oath of registry*) above all charges payable out of the same, lying and being at———(*naming the parish or parishes, town-land or town-lands, and barony or half-barony, baronies or half-baronies, as stated in his oath of registry*) in this county, and that the said freehold does not arise from a rent-charge, and that I have not been polled before at this election." But if his freehold arises from a rent-charge, he shall take the following oath :—" I,———of———in the county of———or of the town or city of———(*as the case may be*) do swear, (*or if a quaker affirm*) that I am a freeholder of this county, and that I have a freehold therein of the clear yearly value of £.20. a year at least, above all charges payable out of the same, consisting of a rent-charge granted by deed bearing date the———day of———in the year———upon the lands of———(*naming the lands mentioned in such deed, and the barony or baronies, half barony or half baronies, wherein the same lie*) and that I am now in the possession thereof, or of the clear amount of £20 yearly value thereof, and have been so ever since I registered the same, and am entitled to receive the same, *or to the clear amount of £20 yearly value thereof, (as the case may be)* as it becomes due, and that I have not been polled before at this election." But it is provided s. 47. that where the freehold, if arising from a rent-charge, shall have come by descent, devise, marriage, or marriage-settlement to the person offering to vote out of same, within 15 months previous to the *teste* of the writ, the

the words in the rent-charger's oath, "and have been so ever since I registered the same," shall be omitted, and the words following added, "and that the said freehold came to me on the——day of——by descent, or devise from——(*naming the person from whom it descended or by whom it was devised*) or by my marriage, or marriage-settlement with——on the——day of——(*naming the person and date*)"; this section of the act also provides that the blank for the parish, barony or half-barony, in the said oaths or affirmations shall be filled up with such names as the person offering to vote shall desire, and £20 or £50 inserted in the freeholders oath, according to the desire of such person, &c.; and by s. 48. if any candidate or elector shall desire it, the words following shall be added to any of the oaths aforesaid, "and that I am to the best of my belief of the age of 21 years." By the 37 Geo. 3. c. 47. s. 1 & 3. Ir. every person who shall offer to vote by virtue of a £20 or £50 freehold, shall, before he polls, declare on oath, if required, whether he has set, or agreed to set, the same to the person from whom he holds it, or to the heirs or assigns of such person, or to any one in trust for him; and if he hath so set or agreed to set the whole of the same, or more than shall leave a sufficiency so unset for such term to constitute such freehold, he shall also declare the time when such agreement was made, and such freeholder shall not be permitted to vote, unless it shall appear that such agreement was made one year previous to the *teste* of the writ.

The 45 Geo. 3. c. 59. s. 4. I. enacts, that from the 29th September 1809, any person who shall offer to vote in Ireland in right of a freehold under the yearly value of £.20, shall, before he shall be admitted to poll, if required by the sheriff or any elector, declare upon oath from whom he holds or derives his freehold, or if he holds it under any person or persons, and if the same be situate in a city, town corporate, or market town, and describe the street or part of the city or town in which the same is situate, and who are his next resident neighbours, and when the same was granted, and for what life or lives, and whether such life or lives, or any of them, is or are

s. 48.

*Oath against
Minority.*37Geo. 3. c. 47.
s. 1 & 3. Ir.45Geo. 3. c. 59.
s. 4. Ir.*Freeholders
under £. 20. to
declare on oath
as to the parti-
cular situation,
&c. of freehold.*

in being at the time of such election, and whether he is the person who actually registered the freehold under which he desires to vote; and the said declarations shall be entered in the poll-book taken by the sheriffs, or their deputies, at such election; and he shall, if so required by any elector, before he be admitted to poll, take the

Additional oath for such freeholders, at the request of candidate or elector.

following oath:—"I A. B. of———in the county of
 "———or of the town or city of———do swear
 " (or if a quaker do affirm), that I am a freeholder of
 " this county; and that I have a freehold therein arising
 " from a house or houses, land, or both, or other heredi-
 " taments, *(as the case may be)* of the yearly value of
 " 40s. at the least, above all charges payable out of the
 " same, lying and being at———in the barony or
 " baronies, half barony or half baronies of———in
 " this county, *(and if in a city or town, or county of a*
 " *city or town, naming the same, and the street, square,*
 " *row, alley, lane, or place,)* and that the said freehold
 " does not arise from a rent-charge.—So help me God."

s. 5.

—And by s. 5. if any candidate or elector shall require it, the words following shall be added, "and that the
 " same arises by virtue of a deed, lease, or instrument,
 " *(or otherwise as the case may be)*, bearing date the
 " ——day of———in the year———for the
 " life or lives of———and that the said———one
 " of the aforesaid lives, is still alive, to the best of my
 " knowledge and belief *(unless he is himself one of the*
 " *lives, in which case he shall swear that I am one of*
 " *the lives therein, instead of the words that the said*
 " *———one of the aforesaid lives, is still alive, to the*
 " *best of my knowledge and belief;)* *(or in case the said*
 " *freehold be not for life or lives, then stating the nature*
 " *of his tenure);*" or the words following: *["and that I
 " have been in the actual occupation thereof for 12 suc-
 " cessive calendar months between———*(naming the*
 " *day he registered the same), and———(naming the date*
 " *of the teste of the writ for holding the election), by*
 " residing thereon, or by tilling and by grazing, or by
 " both

* The 35 Geo. 3. c. 29. s. 49. dispenses with this clause within the crotchets, in cases of freeholds registered according to this act, s. 32. ante page 33.

“ both tilling and grazing, (*as the case may be*) to the
 “ amount of at least 40s. yearly value thereof, (*as the*
 “ *case may be;*”] or the words following; “ and that the
 “ said freehold is not set, or agreed to be set, to the
 “ person or persons who executed the said deed, lease,
 “ or instrument, or to the heirs or assigns of such per-
 “ son or persons, or to any one in trust for him or them,
 “ nor do I intend to set the same to such person or per-
 “ sons, or any of them, and that I have not set it, or
 “ agreed to set it, for the term for which I hold it; and
 “ that I have not been polled before at this election;
 “ and that I am to the best of my belief of the age of
 “ 21 years;” the same shall, or so much thereof as shall
 be desired, shall be added to the said oath or affirmation,
 before the person offering to vote shall be admitted to
 poll. And by s. 6. the blanks in the said oath or affir-
 mation, shall be filled up in conformity to the oath, &c.
 which the person going to take same shall have taken
 at the time of his registering his freehold. The 37 Geo. 3. 37 Geo. 3. c. 47.
s. 5. Ir.
 c. 47. s. 5. Ir. provides that in the oath to be taken at any Oath of free-
holder under
£. 20. at poll-
ing.
 election by any freeholder, who shall offer to vote by
 virtue of a freehold registered under £.20, the words
 “ by residing thereon” or the words “ by tilling or graz-
 “ ing to the amount of 40s. yearly value” shall respectively
 be inserted, according as they shall have been inserted in
 the oath taken, or affirmation made, for the registering
 thereof.

By the 35 Geo. 3. c. 29. s. 38. Ir. no person shall be pre- Freeholder to
vote, though
part aliened.
 cluded from voting by virtue of any freehold, on account
 of having sold, aliened, or disposed of any part of the 35 Geo. 3. c. 29
s. 38. Ir.
 freehold he shall have registered, between the date of such
 registry and the day he shall offer his vote, if he shall
 retain thereof to the annual value sworn in such registry.

It is a provision of the 37 Geo. 3. c. 47. s. 13. Ir. that Returning of-
ficer to see that
freeholder is re-
gistered before
tendering any
oath.
 every returning-officer, and every deputy, shall be autho-
 rized to administer all oaths and affirmations allowed or
 required by the 35 Geo. 3. c. 29. or by this act to be
 administered, but not until it shall appear that the person 37 Geo. 3. c. 47.
s. 13. Ir.
 tendering his vote has duly registered his freehold, where
 such freehold is required to be registered in order to
 entitle him to vote.

By

*Form prescribed
for poll-books of
returning officer.*

35 Geo. 3. c. 29.
s. 16. Ir.

*To be deposited
with clerk of the
peace.*

*Inhabitants in
boroughs.*

35 Geo. 3. c. 29.
s. 62. Ir.

*Duty of church-
wardens.*

s. 63.

*Oath of inhabi-
tants in boroughs*

By the 35 Geo. 3. c. 29. s. 16. Ir. in all elections at which any person shall vote as a freeholder, the returning officer, and every deputy, shall enter in the poll-book the place of every such person's freehold, and the barony or baronies, or half barony or half baronies, wherein such freehold lies, and also his place of abode, as he shall declare the same at the time of offering or giving his vote; and shall also enter (sworn) or (affirmed) as the case may be, against the name of every elector to whom any of the oaths or affirmations required by this act shall be taken, distinguishing the nature of such oath, &c.; and every sheriff presiding at any election for a knight of the shire shall, within 20 days after such election shall have been closed, faithfully deliver to the clerk of the peace of such county, all the poll-books of such election, verifying upon oath that he delivers them without embezzlement, obliteration, erasure, or alteration, to be kept amongst the records of the county.

By the 35 Geo. 3. c. 29. s. 62. Ir. the sheriff of every county wherein there is situated any borough where the right of voting is vested in the inhabitants in general, or in the inhabitants and others, shall, upon receiving the writ for such borough, require the clerk of the peace to deliver to the church-wardens, or one of them, of the parish or parishes wherein such borough lies, his book so kept as directed by s. 56, 57, & 59, (*ante* pages 46-7); and the church-wardens shall attend with the book and duplicate thereof on the returning officer, in the court where the poll shall be taken, throughout the whole of every election for said borough, (unless one of them shall be required by an elector to attend in a deputy's court with his respective book of registry), to be freely inspected in their hands during the election, by any person concerned therein.

And this statute (s. 63), has prescribed the following oath to be taken by any person claiming to vote in right of being an inhabitant, which shall be administered by the returning officer, or his deputy, if thereto required by any elector.—“ I A. B. do swear (*or if a quaker do affirm*), that I am a resident inhabitant in the borough “ of——— in the county of——— and that I have “ been

“ been so for these 12 months last past, and duly proved
 “ and registered my residence 12 calendar months be-
 “ fore the present vacancy, and that my house is situate
 “ in———and that my next neighbours are———and
 “ that I am not an inmate or lodger with any other person
 “ in said borough, nor have I been so at any time within
 “ these 12 months last past, but have paid the usual and
 “ customary taxes and cesses in said borough as an
 “ householder, which have been legally demanded of
 “ me; and that I did not divide my house or out-houses,
 “ or suffer my house or out-houses to be divided, in
 “ order to multiply votes at this election; and that I
 “ did not come to reside in said borough since the pre-
 “ sent vacancy happened, nor in order to give my vote
 “ at this election; and that my said house, exclusive
 “ of my land annexed to or let with it, except that
 “ whereon it stands, with its offices and back or other
 “ yard, is to the best of my knowledge and belief worth
 “ the sum of £.5 yearly rent, and that I believe the
 “ same may be let for said sum of £.5 yearly to a re-
 “ sponsible tenant.—So help me God.”—And if any
 candidate, or any person having a right to vote at such
 election shall require it, these words shall be added to
 said oath—“ and that I am of the age of 21 years, as I *Against mino-*
 “ verily believe;” which oath, &c. so taken shall be *rity.*
 conclusive evidence to the seneschal or returning officer
 of such borough, or his deputy, as to such persons being
 qualified to vote, and no such votes shall be liable to any
 further scrutiny or examination before such seneschal,
 &c. But by s. 64, where the borough shall be situated *s. 64.*
 in two different counties, such alterations shall be made
 in the oath, as well at voting as at registering, as already *Alteration*
 pointed out, *ante* page 48. I proceed to state some provi- *where borough*
 sions of the election laws in England and Ireland which *in two counties.*
 respect elections, whether for counties, cities, or bo-
 roughs.

The 7 & 8 W. 3. c. 27. s. 19. Eng. enacts, that no *7 & 8 W. 3. c. 27.*
 person who shall refuse to take the oaths of allegi- *s. 19. Eng.*
 ance and supremacy, directed by the 1 W. & M. c. 8. *Oath &c. of al-*
 or being Quakers shall refuse to subscribe the declara- *legiance and*
supremacy.
 tion

6 Ann. c. 23.
s. 13. Eng.

*Oath &c. of ab-
juration.*

tion of fidelity directed by the 1 W. & M. c. 18, shall be admitted to give any vote for the election of any knight of the shire, citizen, burgess, or baron of the cinque ports—and the 6 Ann. c. 23. s. 13. Eng. further provides, that every person who shall refuse to take the oath of abjuration therein recited, or being a quaker shall refuse to declare the effect thereof upon his solemn affirmation, as directed by the 7 & 8 W. 3. c. 34. (which oath or declaration, the sheriff, president of the meeting, or chief officer taking the poll, at any election of members for any place in Great Britain, or commissioners for choosing burgesses for any place in Scotland, at the request of any candidate or person present at such election, are required to administer) shall not be capable of giving any vote for the election of any such member or commissioner.—By the former of these statutes catholics are in effect disabled from voting in England.

*Qualification
for catholics to
vote.*

33 Geo. 3. c. 21.
s. 1. Ir.

s. 16.

With respect to the disabilities of catholics to vote at elections in Ireland. By the 2 Ann. c. 6. s. 24. Ir. and 2 Geo. 1. c. 19. s. 7. Ir. they were required to take the oaths of allegiance and abjuration as a qualification for voting at elections of members; but by 1 Geo. 2. c. 9. s. 7. Ir. papists, though not convict, were altogether disqualified from voting, &c. The 33 Geo. 3. c. 21. s. 1. Ir. has since however enacted, that such parts of all oaths required to be taken by persons in order to qualify them for voting at elections for members, and also such parts of all oaths required to be taken by persons voting at elections for members, as import to deny that the person taking the same is a papist, or married to a papist, or educates his children in the popish religion, (which was contained in the oaths prescribed by the 15 & 16 Geo. 3. c. 16. and 21 & 22 Geo. 3. c. 21. Ir.) shall not be required to be taken by any voter; and that it shall not be necessary in order to enable a papist to vote, that he shall at or previous to his voting take the oaths of allegiance and abjuration. But by s. 16, no papist, &c. shall be capable of giving his vote for the electing of any knight, citizen, or burgess to serve in parliament, until he shall have first produced and shewn to the high sheriff of the county, or his deputy acting, and to the returning officer

officer of any city, &c. at the election for such county or city, &c. a certificate of his having taken and subscribed the oath and declaration prescribed by this act, and also the oath appointed by the 13 & 14 Geo. 3. c. 35. either from the rolls office, or from the proper office of the court in which the said oaths and declaration shall be taken and subscribed. And by the 37 Geo. 3. c. 47. s. 19. ^{37 Geo. 3. c. 47. s. 19. Ir.} Ir. any papist, &c. who shall have taken and subscribed, or who shall take and subscribe at any time previous to the *teste* of the writ, the oaths and declarations contained in the 13 & 14 Geo. 3. c. 35. Ir. and 33 Geo. 3. c. 21. Ir. in one of the four courts in Dublin, or at the general sessions of the peace, or at an adjournment thereof, or at any adjournment of an adjournment, to be holden for the county, &c. wherein such papist, &c. doth dwell, or before the going judge of assize in such county, in open court, shall be deemed to have taken and subscribed such oaths and declarations, in order to entitle him to vote at such election, provided he shall produce to the sheriff or other returning officer, a certificate of his having taken and subscribed said oaths and declarations.

The 37 Geo. 3. c. 47. s. 18. Ir. contains a provision ^{Oath against minority to be taken at all elections.} applying to elections in general; by this act, s. 18, if any candidate or elector shall require it, every person requiring to vote at any election shall, before he be admitted to vote, take the following oath:—" I A. B. do swear (or if a quaker do affirm), that I am to the best of my belief of the age of 21 years," which oath or affirmation every returning officer, or his deputy, is required and empowered to administer, either by itself, or in addition to any other oath, &c. which may be tendered to such elector." ^{37 Geo. 3. c. 47. s. 18. Ir.}

By the 2 Geo. 2. c. 24. s. 1. Eng. every person offering ^{Bribery and undue influence.} to vote at any election shall, before he shall be admitted to vote, take the following oath, in case the same shall be demanded by either of the candidates, or any 2 of the electors:—" I, A. B. do swear, (or being one of the people called quakers " I, A. B. do solemnly affirm), I have not received, or had by myself, or any person whatsoever, in trust for me, or for my use and benefit, directly or indirectly, any sum or sums " of ^{2 Geo. 2. c. 24. s. 1. Eng.}

35 Geo. 3. c. 29.
s. 60. Ir.

2 Geo. 2. c. 24.
s. 1. Eng.

s. 2.

s. 7.

“ of money, office, place or employment, gift or reward,
 “ or any promise or security for any money, office, em-
 “ ployment, or gift, in order to give my vote at this
 “ election, and that I have not been polled before at this
 “ election.” The clause of the 35 Geo. 3. c. 29. s. 60. Ir.
 is nearly corresponding, which enacts that if any candi-
 date or elector shall desire it, every person offering to
 vote at any election shall, before he be permitted to poll,
 take the following oath:—“ I, A. B. do swear, (*or being*
of the people called quakers, “ I, A. B. do solemnly affirm)
 “ I have not received or had by myself or any person
 “ whatsoever in trust for me, or for my use and benefit,
 “ or for the use and benefit of any of my family or kin-
 “ dred, to my knowledge or belief, directly or indirectly,
 “ any sum or sums of money, office, place, or employ-
 “ ment, gift, or reward, or any promise or security for
 “ any money, office or employment, in order to give my
 “ vote at this election.” But the 2 Geo. 2. c. 24. s. 1. Eng.
 further requires the officer taking the poll to administer
 this oath *gratis*, on pain to forfeit £50 to any person that
 shall sue by action of debt, &c. at Westminster, or if the
 offence be committed in Scotland, to be recovered by
 summary action or complaint before the court of session,
 or by prosecution before the court of justiciary there;
 and by s. 2. if any sheriff, &c. shall admit any person
 to be polled without taking such oath, &c. if demanded,
 such returning officer shall forfeit £100 with full costs;
 and if any person shall vote without having first taken the
 oath, &c. if demanded, he shall incur the same penalty;
 which provisions are peculiar to this English statute.
 This statute (s. 7.) further provides that if any person
 who shall have, or claim to have, any right to vote
 in any election,* [shall ask, receive, or take any money
 or other reward, by way of gift, loan, or other device, or
 agree or contract for any money, gift, office, employment
 or other reward,] to give his vote or to forbear from giving
 it, or if any person by himself or by any person employed
 by him, shall, by any gift or reward, or by any promise,
 agreement

* Instead of the words within the crotchets, the 35 Geo. 3. c. 29. s. 23. Ir. uses the following “shall directly or indirectly ask, receive, or take any money or other reward for himself or any of his family or kindred.”

agreement, or security for any gift or reward, corrupt or procure any person to give his vote in any such election, or to forbear to give the same, such person shall forfeit £500, with full costs of suit, &c. to the person who shall first sue for the same, (as by s. 1. *supra*,) and such person shall, after judgment obtained against him in any such action, &c. for ever be disabled to vote in any election of a member to serve in parliament, and shall also be for ever disabled to hold or exercise any office or franchise which he then or afterwards may be entitled to as member of any city, borough, town corporate, or cinque port, as if naturally dead. The 35 Geo. 3. c. 29. Ir. contains a similar clause, (s. 23.) with such variations, however, as are noted in the margin. The 2 Geo. 2. c. 24 is by s. 9. required to be read before the electors by every sheriff or other returning officer, immediately after reading the writ or precept, and it is also to be read once every year, at the quarter sessions next after Easter for any county or city, and at the election of the chief magistrate in any borough, &c. and at the election of magistrates and town counsellors for every borough in Scotland; and by s. 10. every sheriff, &c. to whom the execution of any writ or precept for the electing of members to serve in parliament doth belong, shall, for every wilful offence contrary to this act, forfeit £50 to be recovered with full costs of suit, as aforesaid. This offence of bribery is further restrained by the 7 W. 3. c. 4. Eng. which enacts that no person to be elected to serve in parliament for any county, &c. in England, &c. shall, after the *teste* of the writ of summons, or after the *teste*, issuing out, or ordering of the writs of election upon the calling of any parliament, or after such place becomes vacant in time of parliament, before his election give or allow to any person having voice in such election any money, meat, drink, entertainment, or provision, or make any present, &c. or entertainment, or any promise, &c. or engagement to give or allow any money, &c. to or for any such person in particular, or to or for such place in general, in order to be elected; and by s. 2. every person so giving or allowing, promising or engaging, &c. shall be disabled upon such election to serve in parliament for such place.

And

35 Geo. 3. c. 29.
s. 23. Ir.2 Geo. 2. c. 24.
s. 9. Eng.

s. 10.

7 W. 3. c. 4. s. 1.
Eng.*Treating clause.*

s. 2.

35Geo. 3. c. 29.
s. 19. Ir.

Treating clause.

s. 20.

*Number and
payment of
agents, &c. li-
mited.*

s. 21.

*Barristers ex-
cluded.*

And by the 35 Geo. 3. c. 29. s. 19. Ir. no person to be elected to serve for any county, &c. shall, after the *teste* of the writ, or after the vacancy shall have happened, by himself, his friends, or agents, or any person employed on his behalf, directly or indirectly, give, present, or allow to any person having a vote in such election, any money, meat, drink, entertainment, or provision, cockades, ribbands, or other mark of distinction, or make any present, gift, reward, or entertainment, or make any promise, agreement, obligation, or engagement, to give or allow any money, meat, drink, provision, present, entertainment, or reward, to or for any person in particular, or to any such county in general, or to or for the use, advantage, &c. of any such person or place, in order to be elected for such county, &c. and any person so doing shall be disabled and incapable to serve in parliament upon such election for such county, &c. It seems to be with the same view of preventing expense and undue influence, and for preserving the freedom of election, that this statute (s. 20.) provides, that no candidate for a county shall employ at or for any election for such county where a poll shall take place, more hired agents or clerks than at the rate of one for each barony or half-barony in said county; and no candidate for any city, &c. where a poll shall take place, shall employ more than one hired agent or clerk for every 100 voters, who polled at the last or any previous election; and no higher sum shall be paid to any such clerk or agent, than five guineas for the first day, and two guineas for every further day which the poll shall continue; and if any candidate shall have more hired clerks, &c. than hereby allowed, or pay or promise to pay directly or indirectly, to any clerk or agent, more than the wages so specified, he shall forfeit £.1000. to any person who shall sue for the same. By s. 21. no barrister, or counsel, or friend, or adviser of the court, although an elector, shall be permitted to plead before, or be heard as counsel, by any returning officer, or any deputy, at any election, on the part of any candidate or elector, for or against the right of any person to vote at such election, or

or otherwise. But by s. 22. any returning officer may employ a barrister or counsel to assist him in the execution of his duty, and every candidate may pay any sum he thinks proper towards defraying the expense thereof. s. 22.
*Except to be
sheriff's counsel.*

The 34 Geo. 3. c. 73. Eng. as amended by the 42 Geo. 3. c. 62. E. &c. in order to avoid the delay in administering the several oaths required by law by the sheriff or other returning officer during the poll at elections, enacts, that the returning officer at every election in England, &c. after a poll shall be demanded, shall, at the request in writing of any candidate under his hand, immediately, and before he shall proceed further in taking the poll, appoint two or more persons, severally and apart from the place where the poll shall be taken, to administer all the oaths, and take the declarations and affirmations required to be taken at elections, and to certify the names of such electors as shall take such oaths, or subscribe and make such declarations and affirmations: and if the number of persons so appointed shall appear to be insufficient, so that the poll is delayed thereby, the returning officer, by 34 Geo. 3. c. 73. s. 4. *Mode of administering oaths, &c.*
34 Geo. 3. c. 73.
s. 1. Eng.
42 Geo. 3. c. 62.
s. 1. E. &c. may appoint such further number as shall be necessary; *Deputies appointed.* but before such persons take upon them to act under such appointment, they must, by 42. Geo. 3. c. 62. 34 Geo. 3. c. 73.
s. 4.
*Numbers may
be increased.*
42 Geo. 3. c. 62.
s. 1. take the following oath:—" I A. B. do swear, that I
" will faithfully and impartially administer the oaths, and
" take the declarations and affirmations, now required by
" law to be taken or made by voters at elections for
" members to serve in parliament, to and from such
" persons as shall lawfully apply to me in that behalf, in
" order to qualify themselves to vote at this election;
" and that I will, on being thereunto requested, fairly
" and truly give to every such person, or any of them,
" who shall take such oaths, or make such declarations
" or affirmations respectively, or any of them, before me,
" a certificate thereof; and that I will not give such cer-
" tificate to any person before he shall have taken such
" oath or oaths, or make such declaration or declarations,
" affirmation or affirmations respectively, as shall be men-
" tioned in such certificate, before me and in my pre-
" sence:" which oath the returning officer and his de-
puty

34 Geo. 3. c. 73. s. 2. puty are required to administer. And by 34 Geo. 3. c. 73. s. 2. after such oaths shall be taken, any person claiming

Certificate of taking oaths of allegiance, &c.

to vote may, at any time before voting, apply to any one of such persons, who shall thereupon administer such oaths, &c. as are required to be taken, and sign and deliver a certificate thereof, naming therein the person taking the oath, or subscribing, or affirming if a quaker, and the place of such person's abode, and his addition or occupation, and naming also the oath or oaths so administered, or the declaration or declarations, or affirmation or affirmations so made, subscribed, and taken.* And every person producing such certificate shall be permitted to poll, as if the oath had been administered and taken before the returning officer at the

s. 3.

Voters to produce certificates.

election. By this statute (s. 3.) any person offering to vote as an elector without producing such certificate of taking the oaths of allegiance, supremacy, and abjuration, and the declaration of fidelity, and declaration or affirmation of the effect of the oath of abjuration, may be required to take such oath, &c. and shall thereupon immediately withdraw for the purpose of taking the same before one of the persons appointed and sworn as aforesaid. And

s. 5.

Places appointed for such deputies.

returning officers are required by s. 5. to provide proper places for every person so appointed to execute said duty, so that they may act separately without interfering with each other, to which places the electors shall have free access; and such places shall be kept open at least 8 hours in each day, between the hours of 8 in the morning and 8 in the evening, until the final close of the poll. And the said oath, &c. shall be administered to as many together as can conveniently be, not exceeding 12 at one time. And the returning officers are thereby also required to provide a sufficient number of printed forms of the declaration of fidelity, with blanks therein, for the name of the quaker making and subscribing the same,

Blank Certificates to be provided.

one

* The 42 Geo. 3. c. 62. does not prescribe any precise form of certificate, but by reference to the 34 Geo. 3. c. 73. which extended only to the oaths of allegiance, supremacy, and abjuration, or the declarations or affirmations of the effects thereof: I have therefore stated the substance of the certificate to be collected from both acts.

one of which forms shall be filled up with the name of, and subscribed by the person desiring to make, &c. the declaration of fidelity, and shall also deliver to each person so appointed as aforesaid, a sufficient number of printed certificates, to be filled up and delivered to each elector taking such oaths, or subscribing or affirming as aforesaid. And by s. 6. in case any candidate shall, 3 days before any election, give notice in writing to the returning officer, to provide proper places for administering such oaths, &c. they shall accordingly be prepared against the day of the election; and in case a sufficient number cannot be conveniently, and at a reasonable expense, procured, at the place where such election shall be had, then the returning officer shall cause booths or temporary erections to be made in convenient places, the expense of which, and of the said printed forms, as also the allowance and compensation to the several persons appointed to administer the said oaths, &c. not exceeding £1. 1s. to every of them for each day's attendance, shall be defrayed by the candidates in equal proportions, and repaid to the returning officer, and may be recovered in any court of record at Westminster, by action of debt, or on the case, bill, suit, or information.

s. 6.

Booths may be erected for the purpose.

The several English election acts referred to in this chapter, which prescribe certain oaths to be taken, all provide, that any person who shall falsely and wilfully swear or affirm, contrary to the true intent and meaning of these acts respectively, shall suffer the pains and penalties of wilful and corrupt perjury: and the 18 Geo. 2. c. 18. s. 1. 19 Geo. 2. c. 28. §. 1. and 25 Geo. 3. c. 84. s. 8. provide also that such as shall corruptly procure or suborn any persons to swear contrary to these acts, shall incur the pains inflicted by the 5 Eliz. c. 9. Eng. and 2 Geo. 2. c. 25. Eng.: but it is observable that the 35 Geo. 3. c. 29. Ir. (which by s. 72 & 74. provides for the case of perjury) does not in any part extend to subornation of perjury; and the 37 Geo. 3. c. 47. Ir. does not contain any clause extending the penalties of the statutes against perjury, to the breach of the oaths thereby required to be taken. The 45 Geo. 3. c. 59. s. 14. I. which respects freeholders under the yearly value of £20. provides against the

Perjury and subornation of perjury.

crimes of perjury and subornation of perjury, with respect to the oaths thereby prescribed, and enacts, that any person so offending shall incur such pains and penalties, as are inflicted by any act for the more effectual preventing, and further punishment of perjury, and

2 Geo. 2. c. 24. s. 6. Eng. subornation of perjury. By the 2 Geo. 2. c. 24. s. 6.

Conviction of perjury disqualifies.

Eng. no person convicted of wilful and corrupt perjury, or subornation of perjury, shall, after such conviction, be capable of voting in any election of any member: but the election law of Ireland does not contain any such provision, or create any such general disqualification; though the 35 Geo. 3. c. 29. s. 72. Ir. enacts, that any person claiming to vote as an inhabitant of any borough, (where the right of voting is vested in the inhabitants in general, or in the inhabitants and others,) who shall be guilty of perjury in registering his inhabitancy and right of voting, or pretended right in such borough, without being really and *bona fide* a resident inhabitant thereof, according to the form of the oath prescribed thereby, shall not only suffer the pains and penalties of perjury, but be for ever incapable of giving any vote at any election of a member.

Penalty for voting more than once at same election.

18 Geo. 2. c. 18. s. 5. Eng.

By the 18 Geo. 2. c. 18. s. 5. Eng. (which has been in part stated, *ante* page 22 & 25.) any person who shall vote more than once at the same election, shall forfeit £40. to any candidate for whom such vote shall not be given, to be recovered by action of debt in any court of record at Westminster, wherein, &c.; but this clause provides, that where the action is grounded on such fact of having polled more than once at the same election, the proof shall not lie on the defendant, as in case of voting without qualification, &c.* The 19 Geo. 2. c. 28. Eng. contains a similar provision in respect to counties of cities and towns. The 35 Geo. 3. c. 29. Ir. is in some respect analogous, which enacts (s. 53.) that if any person shall poll at any election by virtue of a freehold which he had registered, and of which he shall not be in possession at the time of his polling, he shall, if thereof convicted, be imprisoned in the common gaol of the county for 6 months. And by s. 54. if any person

* vide p. 25.

19 Geo. 2. c. 28. s. 4. Eng.

35 Geo. 3. c. 29. s. 53. Ir.

Voting when not in possession.

s. 54.

not

not a registered freeholder, shall take upon him the name of a freeholder entered upon the registry, or pretend to be the person so registered, and be convicted thereof, he shall be sentenced to stand in the pillory 3 successive market days, in the town where such election has been held, and be imprisoned in the common gaol of the county for 6 months.

With respect to making returns, the 7 Hen. 4. c. 15. *Return of writs.*
 E. & I. enacts, that after the knights of the shire shall be chosen, their names shall be written in an indenture, under the seals of them that did choose them, and tacked to the writ, which indenture shall be the return; and in the writs of parliament, this clause shall be put, "and your election in your full county made, you shall, without delay, distinctly and openly certify, under your seal and the seals of them who were concerned in that election, to us in our chancery, at the day and place in the writ contained." By the 11 Hen. 4. c. 1. E. & I. the justices assigned to take assises shall have power to inquire of returns made contrary to the 7 Hen. 4. c. 15.; and if it be found by inquest and due examination, that any sheriff hath made return contrary to the statute, the sheriff shall incur the pain of £.100. to be paid to the king; and by this ancient statute the knights so returned were to lose their wages; the mode of assessing which was regulated by the 23 Hen. 6. c. 10. E. & I. The 23 Hen. 6. c. 14. E. & I. enacts, that every sheriff, after the delivery of the writ, shall make and deliver a precept under his seal to every mayor and bailiff of the cities and boroughs within his county, reciting the writ, commanding them by the precept, if it be a city, to choose by citizens of the same city, citizens, and if it be a borough, by the burgesses of the same, burgesses, to come to the parliament; and the mayor and bailiffs shall return the precept to the sheriffs, by indentures between the sheriffs and them, of the elections and of the names of the citizens and burgesses chosen; and thereupon every sheriff shall make return of such writ, and of every return by the mayors and bailiffs to him made; and every sheriff that doth contrary to any statute for the election of knights, citizens,
 VOL. I. H. and

8 Hen. 6. c. 7.
E. & I.

s. 3.

25 Geo. 3. c. 84.
s. 1. Eng.

*Return of writs
forthwith; ex-
cept scrutiny de-
manded.*

*Return of pre-
cept 6 days be-
fore return of
writ.*

and burgesses, shall incur the pains contained in 8 Hen. 6. c. 7. E. & I. (viz. a fine of £.100. to the king, and imprisonment for a year); and moreover shall forfeit to every person chosen knight, citizen, or burgess in his county and not duly returned, or to any other which in default of such knight, &c. shall sue, £.100. with costs. But it is provided (s. 3.) that every knight, &c. shall begin his action of debt within 3 months after the parliament commenced, to proceed in the same effectually, and if he do not, any other that will sue shall have the action; and if any knight, &c. returned by the sheriff be put out and another put in his place, such person so put in his place, if he take upon him to be knight, &c. at any parliament, shall forfeit to the king £.100. and the knight, &c. so returned and put out shall have an action of debt for £.100. against the person so put in his place, his executors or administrators; provided he shall begin his suit within 3 months after the parliament commenced, and if he do not then he that will sue shall have an action of debt for the sum of £.100. against him who is put in place of him that is put out, his executors or administrators; and such process shall be in the actions aforesaid as in a writ of trespass against the peace at common law. By the 25 Geo. 3. c. 84. s. 1. Eng. at any election in England, &c. if the poll shall continue until the 15th day, then the same shall be finally closed at or before the hour of 3 in the afternoon of the same day; and the returning officer shall immediately, or the day next after the final close of the poll, truly and publicly declare the name of the person who shall have the majority of votes; and shall forthwith make a return of such person, unless the returning officer, upon a scrutiny being demanded by any candidate or 2 electors, shall deem it necessary to grant the same; in which case it shall be lawful for him so to do, and to proceed thereupon, but so as that in all cases of a general election every returning officer shall cause a return of members to be filed in the crown-office, on or before the day on which such writ is returnable; and every other returning officer acting under a precept shall make a return 6 days before the return of the writ; and so that upon a writ issued during a session

a session or prorogation, and a scrutiny being granted, then that a return shall be made within 30 days after the close of the poll, or sooner if convenient.* And by s. 2. s. 2.
 whenever a scrutiny shall be granted, and there shall *Scrutiny.*
 be more parties than one objecting to votes on such
 scrutiny, the returning officer shall decide alternately on
 the votes given for the different candidates. But by s. 9. s. 9.
 this act shall not affect any place where particular regu-
 lations touching the duration of polls and scrutinies are
 enacted. This act provides (s. 14) that if any sheriff or s. 14.
 other returning officer shall wilfully delay, neglect, or
 refuse duly to return any person who ought to be returned, *Penalty for de-*
 such person may, in case it shall be determined by a se- *lay, &c. of*
 lect committee (appointed as hereby directed) that such *Sheriff.*
 person was entitled to have been returned, sue the sheriff
 or officer, at Westminster, or in the court of session in
 Scotland, and shall recover double the damages he shall
 sustain, together with full costs. The 7 and 8 W. 3. c. 7. s. 2. 7 & 8 W. 3. c. 7.
 Eng. provides that every person that shall be duly elected s. 2. Eng.
 to serve for any county, &c. may in case of a false return *Remedy for*
 sue the officers and persons making or procuring the *false returns.*
 same, or any of them, at Westminster, and shall recover
 double damages with full costs; and by s. 3. if any officer s. 3.
 shall wilfully, falsely, and maliciously return more per-
 sons than are required to be chosen by the writ or pre-
 cept, the like remedy may be had against him, and the par-
 ties that willingly procure the same, by the party grieved.
 And by s. 4. all contracts, promises, bonds, and securities, s. 4.
 given to procure any return of a member shall be void; and *Contracts for*
 whoever makes or gives such contract, &c. or any gift or *false returns*
 reward to procure such false or double return, shall forfeit *void, &c.*
 £.300. one third part to the king, another to the poor
 of the parish, and one third also to the informer, to be
 recovered in any court of record at Westminster by ac-
 tion, &c. And this act (s. 5.) requires the clerk of the s. 5.

H 2

crown

* The 10 and 11 W. 3. c. 7. s. 1. ascertains the fees of the clerk of the crown, for filing such returns, viz. 4s. for a knight, and 2s. for a citizen, burgess or baron; and this act (s. 1 & 3) required the returns to be made with all convenient speed, within 14 days after the election, by the sheriff or other officer, upon pain of forfeiting £.500. one moiety to the king, and the other to any person that should sue, &c. at Westminster.

*Entry of return
by clerk of the
crown.*

crown to enter in a book every single and double return which shall come into his office or to his hands, and any alterations which shall be made by him or his deputy in every such return; to which book all persons shall have free access at all seasonable times, to search and take copies paying a reasonable fee; and any party prosecuting such writ may give in evidence such book or a copy thereof relating to such false or double return, and shall have the like advantage of such proof as by producing the record itself; and in case the clerk of the crown shall not, within 6 days after any return shall come into his hands, make such entry, or shall make any alteration in any return, unless by order of the house of commons, or give any certificate of any person not returned, or shall wilfully neglect to perform his duty in the premises, he shall forfeit to the party grieved £.500. and lose his office, and be for ever incapable of holding the same.

*Penalty for de-
fault.*

*Return of pre-
cept 6 days be-
fore return of
writs.*

35 Geo. 3. c. 29.
s. 17. Ir.

*Return of writ
before return
day.*

s. 18.

*Return of writs
and precepts
issued during
session or proro-
gation.*

*Penalty for de-
fault.*

s. 13.

By the 35 Geo. 3. c. 29. s. 17. Ir. in the case of a general election every returning officer, who shall hold an election by virtue of a precept, shall make due return thereof 6 days before the return of the writ by virtue of which said precept shall have issued; and every sheriff who shall receive any writ for the election of a member, &c. shall make due return of such writ to the clerk of the crown on or before the day on which such writ shall be made returnable: And by s. 18, where a writ shall be issued during a sessions or prorogation of parliament, the return shall be made thereof to the clerk of the crown within 40 days after the *teste* thereof; and if by virtue of such writ the election shall be held by precept, the return of such precept shall be made to the sheriff within 30 days after the date thereof; and every sheriff or other returning officer making default therein, shall forfeit to any person who shall sue for the same, £.100 for each day's default, to be recovered as by s. 75, *post*. By s. 13, no returning officer shall return more than the number of persons he shall by his writ or precept be required to return; and in case of an equality of votes for any 2 or more candidates upon the close of the poll, he

he shall be obliged to give a casting voice, whether *Casting voice.* otherwise legally qualified to vote or not, or whether he shall have voted or not at such election; and if any returning officer shall return more than the number of persons he shall be required to return, he shall forfeit *Penalty for false return.* £.2000 to the person who shall first sue for the same, and be rendered incapable of ever after voting at any election for a member. The 37 Geo. 3. c. 47. s. 14. Ir. *37 Geo. 3. c. 47. s. 14. Ir.* provides that in counties of towns or cities where two sheriffs preside as returning officers, the sheriff whose name stands first in the appointment to the office, shall, *In cities, &c. first sheriff to have casting voice.* if he be present, give the casting voice. By the 35 Geo. 3. c. 29. s. 14. Ir. no fee shall be taken by any returning officer for the making out, delivery, return, or execution of any writ or precept, and all contracts, promises, *Contracts, &c. for making returns, void.* bonds, and securities, to be made or given to any sheriff or returning officer for making a return, or to pay such sheriff, &c. any money by way of gratuity or reward for such return, shall be void; and whoever shall make, give, or accept of such contract, &c. or any gift or reward to procure any false return, shall forfeit a sum equal to *Penalty for making or accepting same.* the value so given, or intended to be given, or accepted, and also £.200 to any person who shall first sue for the same.

The clauses which provide in a special manner for the mode of proceeding by action or prosecution under the *Mode of proceeding for penalties under the several election acts.* several statutes, have been reserved for this place. By the 18 Geo. 2. c. 18. s. 13. Eng. it shall be sufficient *18 Geo. 2. c. 18. s. 13. Eng.* for the plaintiff, in any action of debt * given by this act, to set forth in the declaration that the defendant is indebted to him in the sum of † £.—, and to allege the particular offence for which such action is brought, and that the defendant hath acted contrary to this act, without mentioning the writ of summons to parliament, or the return thereof; and it shall be sufficient in any indictment or information for any offence contrary to this *Form of declaration, &c.* act, to allege the particular offence, and that the defendant

* "Or information" added here in 35 Geo. 3. c. 29. s. 75. Ir.

† 500 is inserted in this place by 35 Geo. 3. c. 29. s. 75. Ir. though various penalties are given by this statute—in one instance £. 1000, in another, £. 2000.

dant is guilty thereof, without mentioning the writ, &c. or return; and upon trial of any issue in any such action, indictment, or information, the plaintiff, prosecutor, or informer, shall not be obliged to prove the writ of summons, or any warrant to the sheriff grounded thereon.

19 Geo. 2. c. 28. s. 9. Eng. A similar clause is contained in the 19 Geo. 2. c. 28. s. 9.

55 Geo. 3. c. 29. s. 75. Ir. Eng.; and the 35 Geo. 3. c. 29. s. 75. Ir. which enacts

that all pecuniary penalties inflicted by this act shall be recovered by action of debt, &c. in any court of record at Dublin, contains also a provision to the same effect. The

31 Geo. 2. c. 14. s. 2. Eng. 31 Geo. 2. c. 14. Eng. contains also a similar clause, (s. 2.)

so far as respects the action of debt for the penalty of £.50 inflicted by this act, which penalty is however to

18 Geo. 2. c. 18. s. 12. Eng. be specified in the declaration. By the 18 Geo. 2. c. 18.

s. 12. Eng. all prosecutions by information or indictment under this act may be either in the court of king's bench, or great sessions in Wales, or at the sessions for Chester, Lancaster, and Durham, or at the assizes for the place where the offence shall be committed; in which no *nolle*

19 Geo. 2. c. 28. s. 8. Eng. *prosequi* or *cesset processus* shall be granted. The 19 Geo. 2.

c. 28. s. 8. Eng. is to the same effect, but that such prosecutions are thereby directed to be in the king's bench,

25 Geo. 3. c. 84. s. 13. Eng. or at the assizes. And by the 25 Geo. 3. c. 84. s. 13. Eng.

all prosecutions are directed to be in the king's bench, or at any court of oyer and terminer, great sessions, or gaol delivery, in which no *nolle prosequi* or *cesset processus* shall be granted.

Costs of proceedings.

18 Geo. 2. c. 18.

s. 16. Eng.

19 Geo. 2. c. 28.

s. 12. Eng.

31 Geo. 2. c. 14.

s. 5. Eng.

In respect to costs, these several English statutes, 18 Geo. 2. c. 18. s. 16, 19 Geo. 2. c. 28, s. 12, and 31 Geo. 2. c. 14, s. 5, provide that in case the plaintiff or informer in any action, indictment, or information, given by these acts, shall discontinue, or be nonsuited, or judgment be given against him, the defendant shall

35 Geo. 3. c. 29. s. 76. Ir. recover treble costs. The 35 Geo. 3. c. 29. s. 76. Ir.

contains a corresponding provision.

Informer indemnified from penalties.

2 Geo. 2. c. 24.

s. 8. Eng.

By the 2 Geo. 2. c. 24. s. 8. Eng. if any person offending against this act shall, within 12 months after the election, discover and convict any other person offending against this act, the person discovering, and not having been before convicted of any offence against this act, shall be indemnified from all penalties and disabilities which

he

he shall then have so incurred. The clause of the 35 Geo. 3. c. 29. Ir. is analogous, which provides (s. 77), that if any person, except a returning officer, clerk of the peace, or treasurer, offending against this act, shall, within 12 calendar months after such offence, discover and convict any other person guilty of a like offence, he shall be indemnified from all penalties and disabilities which he shall have incurred by any such offence.

It is a peculiar provision of the 18 Geo. 2. c. 18. s. 15. Eng. and 19 Geo. 2. c. 28. s. 11. Eng. that all the statutes of jeofails shall extend to all proceedings in any action, indictment, or information given by either of these acts.

It remains to state the periods of limitation prescribed by the several election acts, for proceedings to recover penalties, &c.:—The limitation by the 7 & 8 W. 3. c. 7. s. 6. Eng. is *two* years; and so also by the 2 Geo. 2. c. 24. s. 11. Eng. the party must be legally arrested, or served with writ or process within *two* years; but the 9 Geo. 2. c. 38. Eng. amends the latter act by introducing a saving “that the service of process be not prevented by the person absconding.” The limitation is *nine calendar months*, by the 18 Geo. 2. c. 18, s. 14. Eng., and so also by the 19 Geo. 2. c. 28. s. 10. Eng. and 31 Geo. 2. c. 14. s. 3. Eng.; *One year* by the 3 Geo. 3. c. 15. s. 6. Eng.; and by the 25 Geo. 3. c. 84. s. 15. Eng. all actions, &c. must be commenced within *one year* after the fact, or *six months* after the conclusion of any proceeding in the house of commons. By the 3 Geo. 3. c. 24. s. 9. Eng. 20 Geo. 3. c. 17. s. 19. Eng. 22 Geo. 3. c. 41. s. 5. Eng. and 22 Geo. 3. c. 45. s. 11. Eng. the limitation is *twelve months*. And by the 35 Geo. 3. c. 29. s. 78 Ir. all actions, &c. or prosecutions grounded upon this act shall be commenced, within *one year* after the offence shall be committed.

VIII. With respect to petitions in cases of controverted elections. By the 10 Geo. 3. c. 16. s. 1. Eng. whenever a petition complaining of an undue election or return of a member shall be presented to the house of commons, a day and hour shall be appointed by the house for taking the same into consideration, and notice thereof in writing shall be forthwith given by the speaker to the petitioners and

35 Geo. 3. c. 29.
s. 77. Ir.

Statutes of jeofails extended to actions, &c. under
18 Geo. 2. c. 18.
s. 15. Eng.
19 Geo. 2. c. 28.
s. 11. Eng.

Limitations, for actions, &c. under the several election acts.
7 & 8 W. 3. c. 7.
s. 6. Eng.
2 Geo. 2. c. 24.
s. 11. Eng.
9 Geo. 2. c. 38.
Eng.

18 Geo. 2. c. 18.
s. 14. Eng.
19 Geo. 2. c. 28.
s. 10. Eng.
31 Geo. 2. c. 14.
s. 3. Eng.
3 Geo. 3. c. 15.
s. 6. Eng.
25 Geo. 3. c. 84.
s. 15. Eng.
3 Geo. 3. c. 24.
s. 9. Eng.
20 Geo. 3. c. 17.
s. 19. Eng.
22 Geo. 3. c. 41.
s. 5. Eng.
22 Geo. 3. c. 45.
s. 11. Eng.
35 Geo. 3. c. 29.
s. 78 Ir.

§ 8.

Petitions upon controverted elections.
10 Geo. 3. c. 16.
s. 1. Eng.

Undue election or return.

11 Geo. 3. c. 42.
s. 1. Eng.

*Separate peti-
tions.*

25 Geo. 3. c. 84.
s. 10. Eng.

*No return or
special return,
&c.*

s. 11.

and sitting members, or their respective agents, accompanied with an order to attend the house at the time appointed, by themselves, their counsel or agents. And by the 11 Geo. 3. c. 42. s. 1. Eng. if several parties on distinct interests or grounds of complaint, shall present separate petitions complaining of an undue election or return, the same notices and orders shall be given to all such parties, or their respective agents, as directed by the 10 Geo. 3. c. 16. to be given to the sitting members or the petitioners therein mentioned or their respective agents. And the 25 Geo. 3. c. 84. s. 10. Eng. further provides for the cases where, upon any writ issued for election of members, no return shall be made to the same on or before the day on which such writ is made returnable; or if a writ shall have been issued during any session or prorogation, and no return shall be made to the same within 52 days after the day on which such writ bears date; or if the return made in either of such cases shall not be a return of members, according to the requisition thereof, but contain special matters only concerning such election, and enacts that in such cases it shall be lawful for any person having had a right to vote at such election, or claiming to have had a right to vote or to be returned as duly elected thereat, who shall think himself aggrieved, to petition the house of commons concerning the same, and upon such petition being presented, a day and hour shall be appointed for taking the same into consideration, and notice thereof in writing shall be forthwith given by the speaker to the petitioners, and to the returning officer, accompanied with an order to them to attend the house at the time appointed, according to 10 Geo. 3. c. 16. & 11 Geo. 3. c. 42; and a committee shall be appointed according to the directions of these statutes, (the regulations of which are by s. 11. extended to this act,) to try and determine whether any and which of the persons named in such petition ought to have been returned, or whether a new writ ought to issue; which determination shall be final, and the house, being informed thereof by the chairman of such select committee, shall order the same to be entered in their journals, and give

give directions for ordering a return to be made, or for altering the return if made, or for issuing a new writ, or for carrying the said determination into execution, as the case may require.

By the 28 Geo. 3. c. 52. s. 1. Eng. no petition complaining of an undue election or return, or of the omission or insufficiency of a return, shall be proceeded upon, unless subscribed by some person claiming therein to have had a right to vote at said election, or to have had a right to be returned thereat, or alleging himself to have been a candidate at such election, provided that when a writ has been issued for the election of a member for any district of boroughs in Scotland, such petition may be proceeded on, if subscribed by any person claiming therein to have had a right to vote at the election of any delegate, or commissioner for choosing a burghess for such district. And by s. 5. no proceedings shall be had on any petition, unless the persons subscribing the same, or one of them, shall within 14 days, (or in case of petitions from Ireland, within 28 days, by 47 Geo. 3. c. 14. s. 8.) after the same shall have been presented to the house, or within such further time as shall be limited by the house, personally enter into a recognizance to the king, according to the form annexed to this act, in £.200, with 2 sureties in £.100 each, to appear before the house at such time or times as shall be fixed for taking such petition into consideration; and also to appear before any select committee appointed for the trial of the same, or until the same shall have been withdrawn by the permission of the house; and if at the expiration of the 14 days, such recognizance shall not have been entered into, or shall not have been received by the speaker, the speaker shall report the same to the house, and the order for taking the petition into consideration shall thereupon be discharged, unless upon matter specially stated and verified to the satisfaction of the house, the house shall see cause to enlarge the time for entering into such recognizance; and whenever such time shall be enlarged, the order for taking such petition into consideration shall be postponed, so that no petition shall be taken into consideration till after such recognizance shall have been entered.

Petitions, by whom subscribed & recognizance thereupon.

28 Geo. 3. c. 52. s. 1. Eng.

s. 5.

47 Geo. 3. c. 14. s. 8. I.

Recognizance, when entered into.

entered

entered into and received by the speaker, provided that the time for entering into such recognizance shall not be delayed more than once, nor for any days exceeding 30. By s. 6. such recognizances shall be entered into before the speaker, by whom also the sufficiency of the sureties shall be allowed, on the report of 2 persons appointed by him to examine the same, of which two the clerk or clerk-assistant shall always be one, and one of the following officers not being a member of the house shall be the other, viz. masters in Ch. clerks in K. B. or Exc. or prothonotaries in C. B.; and the said persons are to examine the same and report their judgment thereupon, and shall also receive such fees as shall be fixed by any resolution of the house of commons. And by s. 7. when the parties who are to enter into such recognizances, or their sureties, shall reside more than 40 miles from London, such recognizances may be entered into before a justice of the peace, and being certified under the hand of such justice and transmitted to the speaker, shall have the same effect as if entered into before the speaker; and the persons to whom it is referred to examine the sufficiency of such sureties, may receive as evidence in their examination, any affidavits relating thereto which shall be sworn before any master in chancery, or before any justice of the peace, who are respectively authorized to administer such oaths, and required to certify such affidavits under their hand. By s. 8. the house shall not permit such petition to be withdrawn, except so far as the same may relate to the election or return of any member who shall, since the same shall have been presented, have vacated his seat by death or otherwise. By s. 9. if the petitioners who shall have entered into such recognizance shall not appear before the house, by themselves, their counsel or agents, within one hour after the time fixed for calling in the parties, for the purpose of proceeding to the appointment of a select committee; or if the committee appointed for the trial of such petition shall inform the house, that such persons did not appear before the committee to prosecute their petition; or if such persons shall neglect

s. 6.

Before whom.

s. 7.

When before a justice.

s. 8.

Petition not to be withdrawn.

s. 9.

Within what time petitioner to appear, or recognizance forfeited.

neglect to renew their petition within 4 sitting days after the commencement of every session, subsequent to that in which such petition was first presented, and until a committee shall have been appointed, or until the same shall have been withdrawn by the permission of the house, in such cases such persons shall be held to have made default in their recognizance, and the speaker shall certify such recognizance into the exchequer, and shall also certify that such persons have made default therein; and such certificate shall be conclusive evidence of such default, and the recognizance so certified shall have the same effect as if estreated from a court of law, provided that such recognizance and certificate shall be delivered by the clerk, or clerk-assistant, of the house, into the hands of the lord chief baron, or of one of the barons, or of such officer of said court as shall be appointed to receive the same.

The clause of the 10 Geo. 3. c. 16. s. 1. Eng. as amended by the 11 Geo. 3. c. 42. s. 2. Eng. and 25 Geo. 3. c. 84. Eng. has been already stated,* which provides in respect to appointing a time for taking petitions into consideration; but by the 10 Geo. 3. c. 16. s. 3. Eng. the house may alter the day and hour so appointed, giving to the parties the like notice of such alteration and order to attend. By the 11 Geo. 3. c. 42. s. 2. Eng. no petition complaining of an undue election or return, shall be taken into consideration, within 14 days after the return, to which it relates, shall be brought into the office of the clerk of the crown. And the 28 Geo. 3. c. 52. s. 2. Eng. provides that if at any time before the day appointed for taking such petition into consideration, the speaker shall be informed by a certificate in writing subscribed by 2 members, of the death of the sitting member whose election or return is complained of in such petition, or of the death of any member returned upon a double return, whose election &c. is complained of, &c. or that a writ of summons has been issued under the great seal to summon such member as a peer, or if the house of commons shall have resolved that the seat of such member is become vacant, or if the house shall be informed by a declaration in writing subscribed

Time of taking petitions into consideration.

*Vide pages 103-4.

10 Geo. 3. c. 16. s. 3. Eng.

Time altered.

11 Geo. 3. c. 42. s. 2. Eng.

Time not within 14 days.

28 Geo. 3. c. 52. s. 2. Eng.

Adjournment thereof in what cases.

Notice by the speaker of such circumstance to returning officer.

s. 3.

Elector to be admitted as a party instead of such member.

s. 4.

Sitting member shall not be a party after notice that he will not defend his return

Appointment of Committee.

10 Geo. 3. c. 16. s. 4. Eng.

House counted.

s. 5.

Ballot for 49 names.

subscribed by such member and delivered in at the table of the house, that it is not the intention of such member to defend his election, &c. in every such case notice thereof shall be immediately sent by the speaker to the sheriff or other returning officer, and such officer shall cause a copy of the same to be affixed on the doors of the county-hall or town-hall, or of the parish church nearest the place where such election has been usually held, and such notice shall also be inserted by order of the speaker in the next London Gazette, and the order for taking such petition into consideration shall if necessary be adjourned, so that 30 days may intervene between the day on which such notice shall be inserted in the Gazette, and the day on which such petition shall be taken into consideration. And by s. 3. it shall be lawful at any time within 30 days after the day on which such notice shall have been inserted in the Gazette, for any person claiming to have had a right to vote at such election, to petition the house praying to be admitted a party in the room of such member, and such person shall be admitted accordingly. But by s. 4. whenever the member whose election is complained of in such petition shall have given notice of his intention not to defend the same, he shall not be admitted to appear as a party against such petition in any subsequent proceeding thereupon, and he shall also be restrained from sitting in the house or voting on any question, until such petition shall have been decided upon in the manner prescribed by 10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.

Next, as to the mode of appointing a select committee to try such petition. By the 10 Geo. 3. c. 16. s. 4. Eng. at the time appointed for taking such petition into consideration, and previous to the reading the order of the day for that purpose, the serjeant at arms shall be directed to go with the mace to the places adjacent, and appoint the immediate attendance of the members, and after his return the house shall be counted; and by s. 5. if 100 members shall be then present, the petitioners by themselves, their counsel or agents, and the counsel or agents of the sitting members, shall be ordered to attend

at

at the bar, and then the door of the house shall be locked, and no member shall be suffered to enter into or depart from the house, until the petitioners, their counsel and agents, and the counsel or agents for the sitting members, shall be directed to withdraw as after mentioned; and when the door shall be so locked, the order of the day shall be read, and the names of all the members of the house, written or printed on distinct pieces of parchment or paper, being all of equal size and rolled up in the same manner, shall be put in equal numbers into 6 boxes or glasses to be placed on the table, and shall there be shaken together, and then the clerk, or clerk-assistant, shall publicly draw thereout alternately the said pieces, and deliver the same to the speaker to be by him read to the house, and so shall continue to do until 49 names of the members then present be drawn. By s. 6. if the name of any member who shall have given his vote at any election, or who shall be a petitioner, or against whom a petition shall be then depending, or whose return shall not have been brought in 14 days, shall be drawn, his name shall be set aside. And by s. 7. if the name of any member of 60 years or upwards be drawn, he shall be excused from serving on the select committee if he require it, and verify the cause of such requisition upon oath; and by s. 8. if the name of any member who has served in such select committee during the same session be drawn, he shall, if he requires it, be excused from serving again, unless the house shall, before the day appointed for taking the petition into consideration, have resolved that the number who have not so served is insufficient; but by s. 9. no member who after having been appointed shall on account of inability or accident have been excused from attending throughout, shall be deemed to have served. By s. 10. if any other member shall offer and verify upon oath any other excuse, the substance of the allegation so verified shall be taken down by the clerk, that the same may be afterwards entered on the journals, and the opinion of the house shall be taken thereon; and if the house shall resolve that the said member is unable to serve, or cannot without great detriment,

s. 6.

*What persons
excluded.*

s. 7.

*What persons
excused.*

s. 8.

s. 9.

s. 10.

detriment, he shall also be excused. And this act provides, (s. 11) that instead of the members set aside and excused, the names of other members shall be drawn, until the whole number of 49, not liable to be set aside or excused, shall be complete; and the petitioners or their agents shall then name one, and the sitting members or their agents another, from among the members then present, whose names shall not have been drawn, to be added to those who shall have been so chosen by lot; but by s. 12. either of the members so nominated, may be set aside for the same causes as those chosen by lot, or shall, if he requires it, be excused from serving on said select committee, and the party who nominated the member so set aside or excused, shall nominate another and continue so to do until his nominee is admitted. By s. 15. if upon the drawing out the name of any member, the petitioners or sitting members or their agents shall declare, that such member is intended to be one of the nominees, and if such member shall consent to such nomination, the name of such member so drawn shall be set aside, and unless objected to as aforesaid, he shall serve as such nominee, and the name of another shall be drawn to supply his place to complete the 49; and if the petitioners or sitting members, or their agents, shall not nominate a member then present, who shall be admitted according to the directions of this act, then the want of such nomination shall be supplied by drawing out instead thereof the name of one or two members as the case shall require, who shall be drawn in like manner, and subject to the like objections and excuses as the other 49 members drawn by lot, and shall be added to the lists of the said 49 members, and shall be liable to be struck off in the same manner, leaving always 15 members and no more as a select committee.

If 100 members not present or 49 cannot be completed, house to adjourn.

10 Geo. 3. c. 16. s. 4. Eng.

11 Geo. 3. c. 42. s. 3. Eng.

28 Geo. 3. c. 52. s. 10. Eng.

By the 10 Geo. 3. c. 16. s. 4. Eng. as amended by the 11 Geo. 3. c. 42. s. 3. Eng. 28 Geo. 3. c. 52. s. 10. Eng. and 36 Geo. 3. c. 59. s. 1. Eng. if when the house shall be counted as aforesaid there be less than 100 members present, or if at the time of drawing by lot the names of the members in manner above prescribed, the number of

49, not set aside or excused, cannot be completed, the order shall be immediately adjourned to a particular hour on the following day, (Sunday, Christmas-day, and Good Friday excepted) and the house shall then adjourn to the said day, and the proceedings of all committees subsequent to such notice from the said serjeant shall be void; and the house shall on said following day, &c. proceed in the same manner, and so from day to day, until there be an attendance of 100 members at the reading of the order of the day. And by the 28 Geo. 3. c. 52. s. 11. Eng. if on the day immediately preceding Christmas-day, Whit Sunday, or Good Friday, after reading the order of the day, there shall not be present the said number of 100, or if 49 cannot be completed, it shall be lawful for the house to direct that the said order shall be adjourned, and the house shall immediately be adjourned to any hour and day to which the house shall think fit to adjourn such order. And by this act, (s. 13.) if within one hour after the time fixed in pursuance of these acts for calling in the parties, their counsel or agents, for the appointment of a select committee, the petitioners shall not appear by themselves, their counsel or agents, the order for taking such petition into consideration shall be discharged, and such petition shall not be any further proceeded upon. But by the 36 Geo. 3. c. 59. s. 1. Eng. after the order for taking any such petition into consideration shall be so adjourned, as by these acts is directed, it shall be lawful for the house to proceed upon any order of the day for the call of the house which shall have been previously fixed for that day, and to direct that the house be then called over, or to adjourn such order for a call of the house to a future day, and to make such orders relating thereto as to them shall seem meet; or if no order for a call of the house shall have been so fixed for that day, then the house may order that the house shall be called over on any future day, and make such orders relating thereto as they shall think necessary, and in any case to make such orders, for enforcing the attendance of the members on the business of the house, as to them shall seem expedient; and the house shall then adjourn to

36 Geo. 3. c. 59.
s. 1. Eng.

28 Geo. 3. c. 52.
s. 11. Eng.

*Adjournment in
such cases at
Christmas, &c.*

s. 13.

*If parties shall
not duly appear,
order discharged.*

36 Geo. 3. c. 59.
s. 1. Eng.

*Proceedings al-
lowed after such
adjournment.*

to the same day to which such order shall have been adjourned, and so from time to time; and in case no such proceedings shall take place, or if in the course of those proceedings the house shall be adjourned for want of members, the house shall be deemed to be adjourned to the day to which such order shall have been adjourned; provided that in case the 49 members not set aside nor excused cannot be completed, the house shall not proceed upon any of the said matters until the door of the house is unlocked, and the parties, their counsel, and agents, are withdrawn from the bar.

On the day for considering petition, all other business postponed, except swearing members.

11 Geo. 3. c. 42. s. 4. Eng.

28 Geo. 3. c. 52. s. 12. Eng.

Other exceptions.

32 Geo. 3. c. 1. Eng.

Other exceptions.

36 Geo. 3. c. 59. s. 2. Eng.

Other exceptions.

By the 11 Geo. 3. c. 42. s. 4. Eng. on the day appointed for taking any petition complaining of an undue election or return into consideration, the house shall not proceed to any other business except the swearing of members previous to the reading of the order of the day. But by the 28 Geo. 3. c. 52. s. 12. Eng. it shall be lawful for the house, previous to the reading the order of the day for taking such petition into consideration, to receive any report from any select committee appointed in pursuance of the acts, and to enter the same upon their journals, and to give the necessary orders thereupon; and previous to reading the said order, the clerk of the crown may be admitted to alter any return, in pursuance of an order made on the preceding day, or on that day; or the house may, previous to reading said order, postpone the same for the purpose of attending his majesty, or his majesty's commissioners in the house of lords, in consequence of any message signified to the house in the usual manner. And by the 32 Geo. 3. c. 1. Eng. the house may also, previous to the reading the order for taking any such petition into consideration, receive any message from the lords, or on the day appointed for the trial of any articles of impeachment exhibited by the commons before the lords, proceed to any business that may be necessary for carrying on the prosecution of such impeachment. By the 36 Geo. 3. c. 59. s. 2. Eng. the house may also proceed to the calling over the house, adjourning such call, or ordering a call, and making orders relative thereto, or for enforcing the attendance of the members,

bers, but shall not, on any day when any such petition shall be ordered to be taken into consideration, proceed to any other business, (other than such as may by any act of parliament be proceeded on) previous to reading the order of the day for taking such petition into consideration.

As to the mode of appointing a select committee, by the 10 Geo. 3. c. 16. s. 13. Eng. as soon as the 49 members shall have been chosen, and 2 members nominated, the door shall be opened, and the house may proceed upon other business; and lists of the 49 members shall be then given to the petitioners, their counsel, or agents, and the counsel or agents for the sitting members, who shall immediately withdraw, together with the clerk appointed to attend the select committee; and the said petitioners and sitting members, their counsel or agents, beginning on the part of the petitioners, shall alternately strike off one of the said 49 members, until the number shall be reduced to 13; and the said clerk, within one hour at farthest from the time of the parties withdrawing from the house, shall deliver in to the house the names of the 13 members then remaining; and the said 13 members, together with the 2 members nominated, shall be sworn at the table “well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence;” and shall be a select committee to try and determine the return or election appointed by the house to be that day taken into consideration; and the house shall order the select committee to meet at a certain time to be fixed by the house, within 24 hours after the appointment of the select committee, unless a Sunday or Christmas-day (or Good Friday, by the 28 Geo. 3. c. 52. Eng.) shall intervene; and the place of their meeting shall be some convenient room adjacent to the house of commons or court of requests. By s. 14, on the parties withdrawing, the house shall continue sitting, and the 51 members so chosen and nominated, shall not depart the house, till the time for the meeting of the said select committee shall be fixed; which committee by s. 15, shall always consist of 15 members, and no more.

Mode of appointing a select committee.

10 Geo. 3. c. 16. s. 13. Eng.

Oath of select committee.

Time and place of their meeting.

s. 14.

s. 15.

s. 16.

*Names of the
members sealed
up.*

*Names undrawn
may be drawn at
request of any
member.*

*Committee how
appointed in the
absence of sit-
ting member,
&c.*

28 Geo. 3. c. 52.
s. 14. Eng.

By s. 16, the names of all the members so written and rolled up, as directed by this statute, (s. 5.) shall previous to the day appointed for taking any such petition into consideration, be prepared by the said clerk, or clerk assistant, and by him put into a box or parcel in the presence of the speaker, together with the attestation signed by such clerk, &c. purporting, that the names of all the members were by him put therein the——day of——in the year——; which said box, &c. the speaker shall seal with his own seal, and to the outside thereof annex an attestation, signed by himself, purporting that the said box or parcel was on the——day of——in the year——made up in his presence in the manner directed by this act; and as soon as the parties shall be withdrawn as aforesaid, and before the house shall enter on any other business, any member may require, that the names of all the members which remain undrawn, shall be drawn and read aloud by the clerk or clerk assistant.

By the 28 Geo. 3. c. 52. s. 14. Eng. if within one hour after the time appointed, the sitting member, or other parties opposing the petition, shall not appear by themselves, their counsel, or agents, or if at the time appointed there shall be no party before the house opposing the petition, the house shall proceed to appoint a select committee, to try the merits of such petition in the following manner, viz.: the names of 49 members shall be drawn as prescribed by the former acts, but in reducing the list to 13, the place of a party opposing the petition shall be supplied by the clerk appointed to attend the committee, who shall, as often as it shall come to his turn as supplying the place of the party opposing the petition to strike out a name, strike out that name which then shall be first in the list; and where the party opposing would be empowered by the acts to nominate one member to be added to the 13, the said 13 shall, from among the persons present in the house at the time of drawing the names of the members, choose one person to supply the place of the member to have been nominated, in the same manner as directed by the 11 Geo. 3. c. 42. s. 6. when there are more than two parties on distinct interests,

rests*; and by s. 15, the same method of reducing the list drawn to 13, and of nominating a member to be added to the 13 remaining on the list, shall be followed whenever any party shall wave his right of striking off names, or of nominating a member to be added to the 13.

* Vide next paragraph.

s. 15.

Same proceeding where party waves his right of striking off names, &c.

The 11 Geo. 3. c. 42. s. 6. Eng. provides that where several parties on distinct interests, or grounds of complaint, shall present separate petitions complaining of an undue election or return, each of the said parties

How appointed where parties on distinct interests.

11 Geo. 3. c. 42. s. 6. Eng.

shall, in forming the select committee, successively strike off a member from the 49 to be chosen by lot, until the number be reduced to 13, and the lists of the 49 members chosen by lot shall for this purpose be given to all

Instead of nominees, 2 persons chosen.

the parties; and the order in which the said parties shall so strike off the members, shall be determined by lot after they are withdrawn from the bar, and in such case neither of the said parties (there being more than two) shall be permitted to name a member to be added to the number so drawn by lot; but as the 13 members shall be returned by the parties to the house, such 13 members shall immediately withdraw, and shall by themselves choose 2 members then present in the house, whose names shall not have been drawn, to be added to the 13 members, and shall within one hour from withdrawing, report the names of such 2 members to the house, which 2 members shall be liable to be set aside on the like objections for which nominees may; and in case such 2 members, or either of them shall be set aside, the 13 members shall choose 1 or 2 others, until 2 are chosen against whom none of the objections shall be allowed; and the names of such 2 members shall be then added to the 13; and all the said 15 members shall be sworn at the table of the select committee. By s. 7. where the nominees are by this act directed to be named by the 13 members, no member present at the time of the ballot shall depart from the house, until the meeting of the said select committee shall be fixed. And by the 25 Geo. 3. c. 84. s. 12. Eng. in cases of petitions presented according to the provisions of this statute, s. 10. †, if the returning officer cannot be found to be served with the notice thereof or order to attend, or being served shall not appear by

s. 7.

Meeting of committee fixed.

25 Geo. 3. c. 84. s. 12. Eng.

† Vide s. 10, page 104.

himself

*Select committee
how appointed
under this act.*

himself, his counsel or agents, at the day appointed for taking such petition into consideration, the house may authorize any person to appear in his stead; and in case there shall be more petitions than one presented, complaining of such return, or omission of a return, on distinct interests or different grounds, the house shall determine whether the returning officer, or person appearing in his stead, shall, together with such petitioners, be entitled to strike off from the list of members drawn by lot, as directed by the 11 Geo. 3. c. 42. in the case where there shall be more than two parties before the house or whether such list shall be reduced by the parties severally presenting the said petitions only.

*Where more pe-
titions than one
are to be consi-
dered the same
day.*

42 Geo. 3. c. 84.
s. 1. G. B.

*Successive lists
formed.*

s. 2.

*Number of
members to be
present.*

The 42 Geo. 3. c. 84. s. 1. G. B. contains the following provisions which are proper for this place; by s. 1. where two or more petitions are to be taken into consideration by the house on the same day, it shall be lawful after the summoning the members, and counting the house, as directed by the former acts, to order all the petitioners and other parties, by themselves, their counsel or agents, to attend within the house at the same time before the door shall be locked, and after the list of 49 names of the members present hath been drawn by lot, and completed, in order to form the first committee, according to the directions of the said former acts, it shall be lawful to proceed forthwith and before the door of the house shall be opened (except for the purposes after mentioned), to draw by lot and complete in the same manner, out of the same boxes or glasses, another list of 49 names of the remaining members present, in order to form a second committee, and so successively to form such other number of committees as may be required for the trial of such petitions; and the select committees, and the nominees, shall then severally be appointed according to the former acts in like manner as if only one list of 49 names had then been formed: But by s. 2, it shall not be lawful to proceed to form successive lists in order to form more than one of such committees, unless 120 members shall be present in the house at the time of counting the same; and so if for more than two, 200; for more

more than three, 270; for more than four, 360; and in order to form more than five such committees, 460 members are required to be present. And this act provides, (s. 3.) that in case the house shall proceed to form successive lists in order to form 2 or more committees, and any member whose name is drawn shall be excused for some reason which applies specially to any one petition, the name of such member shall be returned into the box or glass, so that it may be again drawn by lot upon any of the following petitions. And by s. 4. if upon drawing out the name of any member by lot, upon one of such petitions, the petitioners or sitting members, or the agents who shall have been ordered to attend within the house upon any other petition, shall declare that such member is intended to be one of the 2 nominees nominated by them respectively, and if such member shall consent to such nomination, the name of such member so drawn shall be set aside, and another member shall be drawn to complete the number of 49 to be drawn by lot. But by s. 5, if 2 or more such petitions are to be taken into consideration on the same day, and a sufficient number of members liable to serve shall not be present in the house, so that successive lists cannot be formed upon all such petitions, yet the house may nevertheless proceed to form the lists, and appoint the select committees upon such number of petitions, whether one or more, as far as they are enabled to do so by the number of members present, and after such appointment proceed to other business; and the order for taking any remaining petition into consideration shall be adjourned as directed by the former acts. It shall be lawful, by s. 6. for the petitioners and other parties, and their counsel or agents, to withdraw from the house, so soon as the list of 49 members shall have been drawn; and for the clerk appointed to attend the said committee, to return the reduced list, in the time intervening between any two ballots; and the members remaining upon any of the reduced lists, together with the 2 members who shall be appointed as nominees, shall be sworn at the table, and be at liberty forthwith to depart from the house;

s. 3.

Name of member excused, how disposed of.

s. 4.

Names of intended nominees if drawn, set aside.

s. 5.

As many lists as possible formed.

s. 6.

Proceeding after 49 names drawn.

s. 7. house. But this act provides, (s. 7) that when there shall be more than 2 parties on distinct interests, or complaining of an undue election upon different grounds, the 13 members returned to the house by virtue of the 11 Geo. 3. c. 42. shall not choose their nominees, until all the other select committees to be ballotted for on that day shall have been sworn; provided however that if 2 or more committees shall be appointed on the same day, to decide on any petition wherein there shall be more than 2 parties as aforesaid, the committee which shall have been first ballotted for, shall have the preference in the choice of members to serve as nominees. The 47 Geo. 3. st. 1. c. 1. s. 2. further provides that the 13 members, who by virtue of the former acts shall be entitled to choose 2 members, or one member (as the case may require) to be added to the 13 members for the completion of the committee, shall not choose such 2 members, or one member, until all the other select committees to be ballotted for on that day, in the appointing of which the parties before the house shall name 2 members to be added to the members drawn by lot, shall be sworn if any such can be completed. And if 2 or more committees shall be ballotted for on the same day, for the completion of which the 13 members returned to the house shall be entitled to choose 2 members or one member, then the 13 members on the committee or committees which shall have been first balloted for, shall have the preference successively in choosing such member or members for the completion of such committee or committees.

Nominees when to be chosen by parties on distinct interests.

When the 13 members shall have the choice of 1 or 2 members to complete their committee.

And in what order.

Proceedings of committee when formed. With respect to the proceedings of the committee when formed, the 10 Geo. 3. c. 16. s. 17. Eng. enacts, that the select committee shall on their meeting elect a chairman from amongst the members chosen by lot; and

Chairman chosen.

s. 19. if in the election there shall be an equal number of voices, the member whose name was first drawn in the house shall have a casting voice; and so in case there shall be occasion for electing a new chairman, on the death or necessary absence of the first. And by s. 19, the committees shall sit every day, Christmas-day, Sunday, (and Good Friday, by the 28 Geo. 3. c. 52.) excepted;

To sit every day except, &c.

cepted; and shall never adjourn for longer than 24 hours, unless such days intervene, without leave of the house to be obtained upon motion and special cause assigned; and in case the house shall be sitting at the time to which the committee adjourned, then the business shall be stayed, *Adjournments.* and a motion shall be made for a further adjournment for any time to be fixed by the house, not exceeding 24 hours: and by s. 20, where the time prescribed for the

s. 20.

meeting, sitting, or adjournment of the committee, shall by the intervention of a Sunday, &c. exceed 24 hours, *To meet again within 24 hours.* such meeting, &c. shall be within 24 hours from the time of appointing the same, exclusive of such Sunday, &c. And this act provides, (s. 21,) that no member of

s. 21.

any such committee shall absent himself without leave obtained from, or an excuse allowed by the house at the next sitting, on special cause shewn and verified upon oath; and the said committee shall never sit, until all the members to whom such leave has not been granted or excuse allowed are met, and in case they shall not all meet within one hour after the time to which the committee shall have been adjourned, a farther adjournment shall be made as aforesaid, and reported with the cause thereof to the house. And by s. 22, the chairman of the

No member to absent himself.

s. 22.

committee is required, at the next meeting of the house, always to report the name of every member who shall have been absent without leave or excuse, and such member shall be directed to attend the house at the next sitting, and shall then be ordered into the custody of the serjeant at arms for such neglect, and otherwise punished or censured at the discretion of the house, until it shall appear by facts specially stated and verified upon oath, that such member was by a sudden accident, or by necessity; prevented from attending such committee. By s. 23, if

Members absent reported to the house.

s. 23.

more than 2 members shall on any account be absent, the committee shall be adjourned in manner above directed, and so from time to time until 13 members are assembled. And by s. 24, in case the number of members able to attend shall by death or otherwise be reduced

Adjournment if more than 2 absent.

s. 24.

to less than 13, and shall so continue for 3 sitting days, the committee shall be dissolved, and another chosen to

Committee dissolved if number reduced.

try

try the petition, and all proceedings of the former committee shall be void. But by the 28 Geo. 3. c. 52. s. 17. Eng. whenever any committee shall have sat for business 14 days, not including those days on which they shall have adjourned on account of the absence of any member, nor including Sunday, Christmas-day, or Good Friday, they may proceed to business, if a number of members not less than 12 shall be present; and in such case the committee shall not be dissolved by the absence of the members, unless the number able to attend shall by death or otherwise be reduced to less than 12, and shall so continue for 3 sitting days; and whenever any committee shall in like manner have sat for business 25 days, they may proceed to business, if a number of members not less than 11 be present; and in such case the committee shall not be dissolved by reason of the absence of the members, unless the number shall by death or otherwise be reduced to less than 11, and shall so continue for 3 sitting days.

28 Geo. 3. c. 52.
s. 17. Eng.

When not dissolved, though reduced to 12.

When though reduced to 11,

Powers of committee.

10 Geo. 3. c. 16.
s. 18. Eng.

s. 25.

Special report.

s. 27.

By the 10 Geo. 3. c. 16. s. 18. Eng. such committees shall have power to send for persons, papers, and records; and shall examine all witnesses who come before them upon oath; and shall try the merits of the return or election or both, and shall determine by a majority of voices, whether the petitioners or the sitting members, or either of them, be duly returned or elected, or whether the election be void; which determination shall be final, and the house on being informed thereof by the chairman of such committee, shall order the same to be entered on their journals, and give the necessary directions for confirming or altering the returns, or for the issuing a new writ, or for carrying the said determination into execution. And by s. 25, if the committee shall come to any resolution other than the determination above mentioned, they shall if they think proper report the same to the house for their opinion, at the time that the chairman shall inform the house of such determination; and the house may confirm or disagree with such resolution, and make such orders as to them shall seem proper. This act provides, (s. 27.) that whenever the committee shall think it

it

it necessary to deliberate amongst themselves, upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition; as soon as the committee shall have heard the evidence and counsel on both sides relative thereto, the room wherein they sit shall be cleared, if they shall think proper, while the members consider thereof; and all such questions, as well as such determination, and all other resolutions shall be by a majority of voices; and if the voices shall be equal, the chairman shall have a casting voice: But by s. 28, no such determination shall be made, unless 13 members shall be present, and no member shall have a vote who has not attended during every sitting of the committee. And by s. 26, if any person summoned by the committee shall disobey such summons, or if any witness shall prevaricate, or otherwise misbehave in giving or refusing to give evidence, the chairman of the committee, by their directions, may during the course of their proceedings report the same to the house, for the interposition of their authority or censure as the case shall require. But by the 28 Geo. 3. c. 52. s. 16. Eng. the committee is in any of such cases empowered, by warrant signed by the chairman, and directed to the serjeant at arms, or his deputy, to commit such person (not being a peer or lord of parliament) to the custody of the serjeant, without bail or mainprize, for any time not exceeding 24 hours, if the house shall then be sitting, or if not, then for any time not exceeding 24 hours, after the hour to which the house shall be adjourned. The 11 Geo. 3. c. 42. s. 5. Eng. provides that if the select committee shall have occasion to apply or report to the house, in relation to adjournment of the committee, the absence of the members thereof, or the non-attendance or misbehaviour of witnesses summoned to appear, or appearing before them, and the house shall then be adjourned for more than 3 days, the committee may also adjourn to the day appointed for the meeting of the house.

*May deliberate
in private.*

*Determination
by majority.*

s. 28.

Number required
s. 26.

*To report mis-
conduct of wit-
nesses, &c.*

28 Geo. 3. c. 52.
s. 16. Eng.

*May commit for
contempt.*

11 Geo. 3. c. 42.
s. 5. Eng.

*Adjournment in
what case.*

42 Geo. 3. c. 84.
s. 8. G. B.

*Shorthand writer
to attend com-
mittee.*

By the 42 Geo. 3. c. 84. s. 8. G. B. every such committee shall be attended by a shorthand-writer, who shall be appointed by the clerk of the house of commons, and sworn

by the chairman faithfully and truly to take down in shorthand the evidence adduced before the committee, and from day to day as occasion may require to transcribe, or cause the same to be transcribed, in words at length, for the use of the committee.

Oaths by whom administered.

10 Geo. 3. c. 16. s. 29. Eng.

By the 10 Geo. 3. c. 16. s. 29. Eng. the oaths directed to be taken in the house, shall be administered by the clerk or clerk assistant in the same manner as the oaths of allegiance and supremacy; and the oaths before the select committee, shall be administered by the clerk attending the committee; and persons guilty of wilful and corrupt perjury in evidence before the house, or said committee, shall incur the pains and penalties to which any person convicted of perjury is liable by the laws and statutes of the realm.

Committee to report whether petition or opposition frivolous.

28 Geo. 3. c. 52. s. 18. Eng.

By the 28 Geo. 3. c. 52. s. 18. Eng. such committees at the time they report to the house their final determination on the petition, shall also report, &c. whether such petition did or did not appear to them to be frivolous or vexatious; and they shall in like manner report with respect to every party who shall have appeared before them in opposition to such petition, whether the opposition did or did not appear to be frivolous or vexatious; and if no party shall have appeared before them in opposition to such petition, they shall then report, &c. whether such election or return, or such alleged omission or insufficiency of a return, did or did not appear to be vexatious or corrupt. And by s. 19. whenever such committee shall report the petition to be frivolous or vexatious, the parties who shall have appeared before them in opposition to such petition, shall be entitled to recover from the persons who shall have signed such petition, the full costs and expenses which such parties shall have incurred: But on the other hand, by s. 20, whenever such committee shall report the opposition made to the petition to be frivolous or vexatious, the persons who have signed such petition shall be entitled to recover from such parties, with respect to whom such report shall be made, the costs and expenses which such petitioner shall have incurred. And by s. 21, whenever, in any case where no party shall have appeared before

s. 19.

Costs when petition frivolous.

s. 20.

Costs when opposition frivolous.

s. 21.

Costs when return corrupt, &c.

such

such committee in opposition to such petition, such committee shall report with respect to the election or return, or to the alleged omission of a return, or to the alleged insufficiency of a return, complained of in such petition, that the same appeared vexatious or corrupt, the persons who shall have signed such petition shall be entitled to recover from the sitting member (if any) whose election or return shall be complained of, such member not having given notice of his intention not to defend the same, or from any other person whom the house shall have admitted to be a party to oppose such petition, the costs, &c. which such petitioners shall have incurred in prosecuting their petition. And by s. 22, in the cases before mentioned, the costs, &c. of prosecuting or opposing any such petition shall be ascertained in the following manner, viz. on application made to the speaker for ascertaining such costs and expenses, he shall direct the same to be taxed by two persons, of whom the clerk or clerk assistant of the house shall be one, and one of the following officers, not being a member of the house shall be the other, viz. masters in Ch. clerks in K. B. or Exc. and prothonotaries in C. B. and the persons so authorized to tax such costs, &c. shall examine the same, and report the amount thereof to the speaker, who shall on application made to him, deliver to the party a certificate signed by himself, expressing the amount of the costs, &c. allowed in such report; and the persons appointed to tax such costs, shall receive such fees as shall be fixed by any resolution of the house: And by s. 23, the party entitled to such costs, &c. or his executors or administrators, may demand the whole amount so certified, from any one of the persons who are liable to the payment thereof, and in case of non-payment recover the same by action of debt, in any court of record at Westminster, in which action it shall be sufficient for the plaintiff to declare, that the defendant is indebted to him in the sum, to which the costs, &c. so ascertained shall amount by virtue of this act, and the certificate of the speaker under his signature of the amount of such costs, &c. together with an examined copy of the entries in the journals of the house, of the resolutions of the committee, shall

s. 22.

Mode of taxing costs.

s. 23.

Mode of recovering costs.

shall be sufficient evidence in support of such action; and in such action no wager of law, or more than one imparlance shall be allowed; and the party in whose favour judgment shall be given shall recover costs. And by s. 24, when the amount of such costs, &c. shall have been recovered from any person, it shall be lawful for such person to recover in like manner from such other person as shall be liable to pay the said costs, &c. a proportionable share thereof.

In cases where questions of right arise.

28 Geo. 3. c. 52.
s. 25. Eng.

Statement to be made to clerk of committee of questions to be determined.

Report entered on journals, and notice thereof given.

s. 26.

Appeal from such decision touching the right of election, &c.

This statute further enacts, (s. 25.) that whenever any such committee shall be of opinion that the merits of such petition do wholly or in part depend on any question which shall be before them respecting the right of election for the county, city, and borough, district of burghs, or place to which such petition shall relate, or in respect of the right of appointing the returning officer, the said committee shall require the counsel or agents for the parties, or if there be none such before them, then the parties themselves, to deliver to the clerk of the committee, statements in writing of the right of election, or right of appointing returning officers, for which they contend, and the committee shall come to distinct resolutions on such statements, and shall at the time they report their final determination on the merits of such petition, also report to the house such statement, together with their judgment in respect thereto, and such report shall be entered in the journals of the house, and notice thereof shall be sent by the speaker to the sheriff or returning officer, and a true copy of such notice shall by such sheriff, &c. be affixed to the doors of the county-hall, or town-hall, or of the parish church nearest to the place where such election has usually been held, and such notice shall also be inserted by order of the speaker in the next London Gazette. But by s. 26. it shall be lawful for any person within 12 calendar months after the day on which such report shall have been made to the house, or within 14 days after the commencement of the next session, to petition the house to be admitted as a party to oppose that right of election, or of appointing the returning officer, which shall have been deemed valid in

in the judgment of such committee. And by s. 27. if such petition shall not be presented within the time so limited, the judgment of such committee on such question shall be conclusive in all subsequent elections for that place, to all intents and purposes whatsoever. And by s. 28. whenever such petition shall be presented, a day and hour shall be appointed by the house for taking the same into consideration, so that 40 days shall always intervene between the day of presenting such petition, and the day for taking the same into consideration; and notice of such day and hour shall be inserted by order of the speaker in the next London Gazette, and shall also be sent by him to the sheriff or returning officer; and a copy of such notice shall by the said sheriff be affixed to the door of the county or town-hall, or of the nearest parish church.

s. 27.

Decision when final.

s. 28.

Petition against decision of committee when considered.

By s. 29. any person may, before the day of taking such petition into consideration, petition the house to be admitted as a party to defend such right of election, or of appointing the returning officer, and shall be thereupon admitted as such. In respect to such petitions when renewed in any subsequent session, the 34 Geo. 3. c. 83. s. 1. Eng. provides that the same shall be presented to the house within 14 days after the commencement of any such subsequent session, and that when any such renewed petition shall be so presented, a day and hour, not less than 14 days' distance, shall be appointed by the house for taking the same into consideration. And by s. 2. if any such petition shall not from time to time, and in every subsequent session of parliament until the same shall be taken into consideration, be renewed within the time so limited, the judgment of such committee shall be conclusive in all subsequent elections of members for that place, and to all intents and purposes.

s. 29.

Parties admitted to oppose such petitions.

34 Geo. 3. c. 83. s. 1. Eng.

Renewed petition.

s. 2.

By the 28 Geo. 3. c. 52. s. 30. Eng. at the hour appointed for taking any such petition into consideration, the house shall proceed to appoint a select committee to try the merits thereof according to the directions of the acts, and such committee shall be sworn to try and determine the merits of such petition, so far as the same relate to any question respecting the right of election, or respecting

How such petitions determined.

28 Geo. 3. c. 52. s. 30. Eng.

s. 32.

*Distinction in
respect to such
petitions.*

specting the right of appointing, nominating, or choosing the returning officer; and the determination of such committee on such question shall be entered on the journals of the house, and shall be conclusive in all subsequent elections for that place to which the same shall relate. And by s. 32. the regulations and powers prescribed or given by the former acts or this act, to select committees for the trial of controverted elections or returns, shall be in full force with respect to committees appointed by this act for the trial of such questions of right, provided that the rules before enacted by which persons are required to enter into recognizances, and by which persons are liable to the payment of costs in the cases before specified, shall not apply to the case of any petition relating solely to any question respecting the right of election, or of appointing returning officers.

*Prorogation of
parliament
pending petition*
28 Geo.3. c.52.
s. 33. Eng.

This act provides (s. 33.) that whenever parliament shall be prorogued, while any committee shall be sitting for the trial of any such petition, and before they shall have reported to the house their final determination thereon, such committee shall not be dissolved by such prorogation, but shall be thereby adjourned to 12 o'clock on the day immediately following that on which parliament shall meet again for the dispatch of business, (Sunday, Christmas Day, and Good Friday excepted,) and all former proceedings of the committee shall remain of the same effect as if parliament had not been prorogued; and such committee shall meet on the day and hour to which it shall be so adjourned, and shall thenceforward continue to sit from day to day until they have reported to the house their determination on the merits of such petition.

*Rules in respect
to petitions not
altered by the
Union.*

42 Geo.3. c.106.
s. 1. U. K.

The 42 Geo. 3. c. 106. s. 1. U. K. has enacted, upon the union with Ireland, that the rules, regulations, authorities, and powers theretofore given or prescribed by any act of parliament of Great Britain, and in force at the time of the passing of the act for the union of Great Britain and Ireland, with respect to petitions presented to the house of commons, complaining of undue elections or returns of members, or of the omission or insufficiency of any such return, and with respect to pe-
titions

titions of persons desiring to oppose any right of election, or any right of choosing, nominating, or appointing returning officers, which shall have been deemed valid by the determination of any select committee, shall be in full force with respect to all such petitions as shall be presented to the house of commons of the united kingdom, from any place or person in any part of the united kingdom, except so far as the same are altered by this act. And with respect to Ireland in particular, this act (s. 2.) provides that no such petitions shall be proceeded upon by the house, unless the same shall state all the matters and things concerning which the petitioners presenting the same are desirous of complaining, and to which they intend to call and examine witnesses; and that no witnesses shall be called, &c. by or on behalf of such petitioners, either by or before the committees to be chosen for the trial of such petitions, or by or before the commissioners to be chosen and appointed in manner herein mentioned, to any matters not contained or set forth in such petitions, or in the lists and statements herein mentioned.* By s. 3. all the parties appearing before any such committee, shall immediately after a chairman shall be chosen by the committee, and before any other business shall be proceeded on by the parties or either of them before the committees, interchange lists of the names of all such voters to which either of the parties intend to object, as also statements in writing of all particulars respecting any right of voting, or of choosing, or of nominating a returning officer, and respecting all other matters meant to be insisted upon; and that no witness shall be called, &c. by or on behalf of either of the parties before the committee, or before the said commissioners, to any matter not specified in the said lists or statements, or in such petition. And by the 47 Geo. 3. st. 1. c. 14. s. 4. I. the parties so appearing and delivering lists of voters, shall in such lists specify against the name of every voter contained in such list, the particular grounds of objection to such vote or voter, and no evidence shall be adduced before the committee or commissioners, against the validity of any vote upon any other

s. 2.

Petitions from Ireland, what to state.

s. 3.

Lists of objectionable voters interchanged.

47 Geo. 3. st. 1. c. 14. s. 4. I.

*No other objections entered into** *Vide* 47 Geo. 3. st. 1. c. 14. s. 8. I. *ante* page 105.

other ground than one so specified; and if any objection shall be so stated, and no evidence shall be produced before the committee or commissioners to substantiate the same, if the select committee shall be of opinion that such proceeding was frivolous and vexatious, they shall report the same to the house, together with their opinion on the other matters relating to said petition, and the opposite party shall in such case recover from the party on whose behalf any such objection was made, the full costs and expenses incurred by such frivolous objection, which costs, &c. shall be ascertained and recovered in like manner as the costs of frivolous petitions, or frivolous opposition to any petition.

*Commissioners
for examination
of witnesses.*

42Geo.3.c.106.
s. 4. I.

For avoiding the inconveniencies and expense which may arise, by reason of witnesses being brought from Ireland to be examined before such committee, it is enacted by the 42 Geo. 3. c. 106. s. 4. I. that whenever a committee shall be appointed for the trial of any such petition, upon its appearing to the committee from the nature of the case, and the number of witnesses to be examined relative to any allegation in the petition, that the same cannot be effectually inquired into before such committee, without great expense and inconvenience to the parties or either of them, it shall be lawful for the committee, upon the application of any of the parties, at any period during their proceedings upon such petition, to make an order for the nomination and appointment of commissioners in manner herein directed; but it is provided (by s. 5.) that no such commission shall issue, unless the party

s. 5.

*Notice of appli-
cation for such
commission.*

s. 6.

*Committee may
refuse commissi-
on.*

s. 7.

*Mode of ap-
pointing commis-
sioners.*

intending to apply for the same shall serve a notice on the opposite party, as soon as the petition shall be presented to the house, of his intention to apply to the committee for such commission; and by s. 6. if the committee shall not think it necessary to make such order, or to appoint commissioners, they shall proceed to try the merits of the petition in like manner as in case of controverted elections in Great Britain. The mode of appointing commissioners under this act, is by s. 7. that on the next sitting day after the order for the appointment of commissioners shall have been made by the committee, in

in the presence of the committee, and of the petitioners and sitting members, and their respective counsel or agents, and also in the presence of all parties before the house on distinct interests, or complaining or complained of on different grounds, or whose right to be elected or returned may be affected by the determination of the committee, or their respective counsel or agents, or in the presence of such of the said parties, their counsel, or agents, as shall then and there attend, the names of 3 *Who to be commissioners.* barristers each being of 6 years' standing at the bar, and each of them having consented under their hands and seals, to become commissioners on being appointed in manner herein mentioned, (and not having voted at the election in question, nor having been at the time of such election sheriff of the county, or returning officer of the city, &c. in or for which the said election, return, or other matter of the petition arose, nor having been counsel at such election,) shall be delivered to the chairman of the committee, by or on behalf of each of the distinct parties, or of such of them as shall then and there attend by themselves, their counsel or agents; and a list of the whole of such names shall forthwith be made, and thereupon the said parties, their counsel or agents, beginning on the part of the petitioners, shall in the presence of the committee, proceed alternately to strike off the name of one of the said barristers contained in the said list, until the number shall be reduced to 2, which 2 barristers together with the chairman, who shall also be a barrister of the like standing, and who shall be named in manner herein mentioned, shall be commissioners for examining all such matters as shall be referred to them by the committee, and specially assigned and limited in the order of the committee for that purpose. And by the 47 Geo. 3. st. 1. c. 14. s. 2. I. no person shall be a commissioner who shall have voted at the election in question, or who shall have or claim any right to vote for the county, &c. re- *What persons excluded.* specting which the election or return complained of or other subject matter of such petition arose, without the consent in writing of the petitioners and sitting members; but by s. 3. any objection to the appointment of a commissioner shall be made at the time of his being chosen

and appointed, or otherwise shall be of no effect. By 42Geo.3.c.106. the 42 Geo. 3. c. 106. s. 8. I. immediately after such s. 8. I.

Chairman, how appointed.

s. 9.

List of barristers returned.

s. 10.

Commissioners appointed by consent.

s. 11.

How appointed where parties appear upon distinct interests

Attendance of petitioner when required.

42Geo.3.c.106. s. 12. I.

appointment of the 2 commissioners, and before the committee shall adjourn, a third commissioner, who shall be the chairman of the committee, shall be thus appointed, viz. if all the parties interested shall agree amongst themselves in appointing any one such barrister who shall have consented thereto under his hand and seal, then such barrister shall be the chairman, or otherwise the committee shall nominate any barrister of the like standing, in manner directed by s. 9., which provides that the clerk of the crown in Ireland or his deputy shall, at the commencement of every session of parliament, send over to the speaker a list of all such barristers, of not less than 6 years standing, who shall have consented under their hands and seals to act either as commissioners, or as chairmen to the commissioners, for the purposes of this act, out of which list the committee shall appoint a commissioner to act as chairman; provided that no barrister whose name shall have been previously struck off the list by any of the parties before the committee, shall be appointed to act as chairman. By s. 10. if all the parties interested in the petition shall agree in nominating any 3 such barristers to be commissioners, and shall deliver to the chairman of the select committee a list of the 3 so agreed upon, and consenting to act as aforesaid, such list being signed by all the parties, such 3 persons shall be the commissioners, and shall appoint one of themselves to be their chairman. But by s. 11. where more than 2 parties appear before the house upon distinct interests at the striking of the committee, if it shall appear that there is a collusion between them, in such case none of the parties shall be permitted to give in any list of barristers, but the committee shall, out of the list so returned by the clerk of the crown or his deputy as aforesaid, appoint the 3 commissioners, and nominate which of the three shall act as chairman.

By s. 12. if within one hour after the time fixed by the committee for the appointment of commissioners, any petitioner shall not appear either by himself, his counsel or

or agents, before the committee, or shall not give in any list of names as aforesaid, then the committee shall not proceed to the appointment of commissioners, so far as respects such petitioner so making default, but shall forthwith report to the house that such petition in such respect was not proceeded upon before the said committee, and the petitioner so neglecting to appear shall be held to have made default in the recognizance entered into by him on the presenting of such petition. And by s. 13.

s. 13.

if within one hour after the time fixed by the committee for the appointment of commissioners, the sitting member or any other party opposing the petition, shall not appear before the committee by himself, or his counsel or agents, or shall not give in any list of names in manner aforesaid, the place of a party opposing the petition shall be supplied by the chairman of the committee, who shall accordingly, as often as it shall come to his turn, as so supplying the place of the party, &c. to strike out a name, put all the remaining names into a glass, and draw one out, which name shall be struck off the said list; and the same method of reducing the said list to the number of 2, shall be followed whenever any party shall wave his right of striking off names from the said list.

Absence of sitting member, &c. how supplied.

By s. 14. when the commissioners shall be so appointed as aforesaid, the chairman of the committee shall issue a warrant under hand and seal directed to each of the commissioners, commanding them, under the penalty of £500, to repair to the city, borough, town, or place, in or for which the election or return complained of, or other subject matter of the petition arose, on a day certain to be named in said warrant, which day shall not be less than 14 days, nor more than 21 days, distant from the day on which the commissioners were appointed; and any commissioner who shall neglect or refuse to obey such warrant shall forfeit £500.; the chairman of the committee is hereby required to address to the chairman of the commissioners, a true copy of the petition which shall have been referred to the committee, and of the lists and disputed votes and statements of the several parties which shall have been delivered before the committee, together

Warrant of the chairman of the committee for meeting of the Commissioners.

42 Geo. 3. c. 106. s. 14. l.

Penalty of neglect, &c.

Chairman of the committee to have petition, &c. transmitted.

with a true copy of the order made by the said committee, specially assigning and limiting the facts and allegations, matters and things, respecting which the commissioners are required to examine evidence, and report the same, together with all such other documents and papers as the committee shall think proper; all which warrants, petitions, orders, and papers shall be conveyed to the clerk of the crown in Ireland or his deputy, and by him or his deputy transmitted to the several parties, in the method used in conveying writs in Great Britain; and the chairman of the committee shall also transmit a copy of his warrant to the printer of the Dublin Gazette, to be inserted in the next number of the Gazette which shall be published after the receipt of such copy.

Copy of warrant published.

Adjournment of Committee upon appointment of Commissioners.
42 Geo. 3. c. 106.
s. 15. I.

By s. 15. immediately after the completion of the proceedings aforesaid, the chairman of the committee shall thereupon report the proceedings of the committee to the house, and shall ask permission for the committee to adjourn until such time as the speaker shall by his warrant, as aftermentioned, direct the committee to reassemble, and upon such permission being granted they shall adjourn accordingly. But when any committee shall so report to the house, they shall state in their report that they have gone through all the other parts of said petition, except what have been specially referred to the commissioners in Ireland. And it is provided (s. 16.) that such committees, appointed for the trial of such petitions from Ireland, shall not be dissolved on account of the death or absence of any number of the members thereof, except the number shall be reduced to less than 9.

s. 16.

Committee dissolved by reduction of number.

Meeting of commissioners.
42 Geo. 3. c. 106.
s. 17. I.

By this act, (s. 17.) on the day and at the place appointed, between the hours of 10 in the forenoon and 4 in the afternoon, the commissioners and chairman are required to meet and open the court, and commence their proceedings by reading the warrant of the chairman of the committee, and the copy of the petition annexed to the warrant, as also the copies of all other papers transmitted by the chairman; and the commissioners shall before proceeding, further take the following oath:—

Their oath.

“ I, *A. B.* do swear, that I will, without favour, affection,
“ or malice, and according to the best of my skill and
“ knowledge

“ knowledge, well and truly try and examine all such
 “ matters and things as shall be brought before me, by
 “ virtue of a warrant, dated the——day of——
 “ under the hand and seal of the chairman of the select
 “ committee of the house of commons, on a petition
 “ from *(here state the name or names of the petitioner or*
 “ *petitioners, and of the place to which the petition relates,)*
 “ and that I will in all things well and truly perform the
 “ duty of a commissioner appointed to try the said
 “ matters and things, according to the rules, regulations,
 “ and directions contained in an act passed in the 42d
 “ year of the reign of king George the third, intituled
 “ *(here set forth the title of this act.)** So help me God.”

Which oath the chairman of the commissioners, having first taken and subscribed the same in the presence of the rest of the commissioners, is to administer to the other commissioners. And the said commissioners shall sit every day (Sunday, Christmas Day, and Good Friday, only excepted), from 10 in the morning until 4 in the afternoon, and shall never adjourn for a longer time than 24 hours, except in the case of the death or continued absence of any of the commissioners, unless Sunday, &c. shall intervene; and in case of such intervention every meeting, sitting, or adjournment, shall be within 24 hours from the time of appointing the same, exclusive of such Sunday, &c. And this section of the act provides, that if any person shall act as a commissioner not being qualified by his degree as a barrister, he shall forfeit £.500.

Sittings and adjournments of Commissioners.

Penalty for unqualified barrister acting.

By s. 18. no commissioner shall be allowed to absent himself from the daily sittings and meetings, except in cases of sudden accident or necessity, or in case of illness, and such cases of accident or necessity shall be made appear to the commissioners, by facts specially stated and verified upon oath of the commissioner so absenting himself; and such illness shall be certified to the other commissioners on the oath of a physician, which oaths shall be made before a justice of the peace; and any commissioner who shall absent himself without such lawful excuse, shall for every day he shall so absent himself,

s. 18.

Penalty for absence.

* “ An act for regulating the trial of controverted elections or returns of members to serve in the united parliament for Ireland.”

s. 19.

*Other chairman
and commissio-
ners substituted.*

himself, forfeit £.500. And by s. 19. the commissioners shall never sit until all the commissioners are met, except where the absence of a commissioner is verified upon oath as aforesaid, nor then, except by the consent of all parties; and in case the commissioners or such number as shall be so consented to, (the chairman being always one) shall not meet within one hour after the time to which the meeting of the commissioners shall have been adjourned, a further adjournment shall be made in the manner before directed, and so from time to time, until all the commissioners, or such number as shall be so consented to, (the chairman being one) are assembled; but if the number of the commissioners able to attend, shall at any time by death or otherwise be unavoidably reduced to less than 3, and shall so continue for the space of 3 sitting days, and no such consent as herein mentioned shall have been given, the party by whom the commissioner so dying or absenting himself was originally appointed shall nominate a barrister, having consented in manner aforesaid, to act in his place; and in case of the death or continued absence of the chairman for 3 sitting days, then the remaining commissioners shall proceed to nominate one other such barrister, having consented as aforesaid, to be a new commissioner and chairman; but in case they shall not agree in the appointment of a chairman, then the names of the remaining commissioners shall be put into a glass in open court, in the presence of the parties or such of them as shall attend, and the commissioner whose name is first drawn out, shall appoint one such consenting barrister to be such chairman, and the remaining commissioners shall give him notice of this appointment, and he shall thereupon, under the penalty of £.500, repair to the place of meeting of the other commissioners, on a day certain to be named by the remaining commissioners, which day shall not be more than 14 days distant from the day on which the commissioner or chairman was so appointed; and every such new commissioner shall have the same power, &c. as the old. But it is provided (s. 20.) that any number of the commissioners (the chairman being always one) may, during the absence or after the death of any other of the commissioners,

s. 20.

*Commissioners,
though number
not complete,
may proceed by
consent.*

commissioners, execute all the purposes of this act with the consent of all the parties interested; which consent shall be entered on the minutes of the proceeding of the commissioners, and signed by the parties, their counsel or agents, respectively. And by s. 21. if any commissioner appointed by virtue of this act, shall be prevented from attending at the day and place appointed, by any sudden accident, necessity, or illness, to be verified upon oath in manner herein directed with respect to the absence of either of the commissioners, after proceeding on the commission, then the commissioner so prevented from attending shall not be liable to the penalty of £.500.

s. 21.

Excuses for absence.

By s. 22. the commissioners are empowered to adjourn to any town within the county, in all cases where it shall appear to them necessary so to do. And by s. 23. the chairman shall have power, by warrant under his hand and seal, to send for all persons, papers, and records; and the said commissioners shall examine all witnesses who shall come before them upon oath, and proceed in scrutinizing the rights of voters, and examine all matters referred to them, and have the same powers for the purpose as select committees of the house on controverted elections; and the commissioners shall appoint a clerk to take down in writing, minutes of all their proceedings, and of all such evidence as shall be given or produced before them; and which clerk shall take them as accurately as possible, and give a copy thereof to each of the parties interested, or his agent, or to such of them as shall demand the same. And within 10 days after the evidence before the commissioners shall be closed, the commissioners shall cause 2 copies of the minutes, &c. to be made, and shall examine the same with the minutes, and sign and seal such copies, and shall transmit by their clerk one of said copies to the clerk of the crown for Ireland, or his deputy, at the crown-office in Dublin; and the other of the said copies to the speaker, who shall communicate the same to the house; and upon the transmission of said copies, the commissioners shall adjourn until they shall receive further orders from the select committee. And by the 47 Geo. 3. st. 1. c. 14. s. 1. I. such clerk shall be sworn by the chairman of the commissioners,

Power of commissioners to adjourn from place to place.

42 Geo. 3. c. 106.

s. 22. I.

s. 23.

*And to send for persons, papers, &c.**Duty of clerk of commissioners.*47 Geo. 3. st. 1.
c. 14. s. 1. I.

faithfully

“faithfully and truly to take down in writing the evidence adduced before the commissioners, and from day to day, as occasion may require, to transcribe, or cause the same to be transcribed for the use of the commissioners; and that in taking down the said evidence in writing he will give the exact words in which such evidence shall be delivered, in as accurate a manner as the same can possibly be done, and will in all things conduct himself as such clerk without favour, affection, or malice, according to the best of his skill and judgment;” but the provisions of the 47 Geo. 3. c. 14. s. 2. & 3. (*ante*, page 129.) extend to clerks in like manner as to commissioners. By the former of these statutes, (42 Geo. 3. c. 106. s. 24. I.) the commissioners shall not suffer any barrister or counsel to plead before them, or to examine or cross-examine any witness, but the commissioners themselves shall examine, &c. And by s. 25. in case the commissioners, or a majority of them, shall be of opinion that any witness ought not to be examined, they shall state in writing the reasons and grounds upon which they have rejected said evidence, and enter the same upon their proceedings; and the party tendering or offering to produce such witness or evidence, may require of the commissioners, that the witness, &c. shall be examined, &c.; and the testimony of the witness, or the purport of such evidence shall be taken down in writing by the clerk separately from all other evidence, and a copy thereof, with a statement of the purpose for which the same was produced, and by whom, &c. shall be signed and sealed by the commissioners, in the nature of a bill of exceptions to evidence, and the same shall be transmitted by the commissioners, together with all the other proceedings; and if the committee shall be of opinion, that the tendering of such witness or evidence was frivolous or vexatious, or that the testimony of such witness or the purport of such evidence was impertinent or irrelevant to the matter in issue, the committee shall report such opinion to the house, together with their opinion on the other matters relating to the said petition; and the party who shall, before the commissioners, have opposed the examining, &c. of such witness, &c. shall recover from the person who shall have produced such

42 Geo. 3. c. 106.
s. 24. I.

No barrister to
plead, &c. before
commissioners.

s. 25.

Exceptions to
evidence re-
corded.

Costs of excep-
tions.

such witness, &c. the full costs and expenses which such party shall have incurred in opposing the same; which costs, &c. shall be recovered in the same manner as the costs of frivolous or vexatious petitions, or frivolous or vexatious opposition to any petition.

By s. 26. the speaker is required, within 2 days after the copy of the proceedings before the commissioners shall be received by him, to insert in the London Gazette a warrant signed by him, directing the committee upon the petition in question to meet again, within a month from the date of such warrant, provided parliament shall be then sitting, or otherwise to meet within a month after the commencement of the next session; and the committee shall accordingly meet, and take the proceedings of the commissioners into consideration, and proceed to determine the matters of the petition as other select committees on controverted elections; but said committee shall not call for or receive any further evidence, written or parol, respecting any matter which shall have been examined by the commissioners, but shall determine on all matters from the written minutes, and the certificates of the commissioners so signed, sealed, and transmitted as aforesaid; and the committee shall be at liberty to hear counsel, as to the effect of the evidence, in like manner as respecting any other matter before them, and shall report their own opinion to the house, upon the whole merits of the election, or other matters of the petition. But the committee are empowered by s. 27. at any time before reporting their final opinion, to direct any further warrant to the chairman of the commissioners, under the hand and seal of the chairman of the committee, directing the commissioners to be reassembled for such purposes as shall be specified in the warrant, and the like proceedings shall be had as in pursuance of the first warrant. And by the 47 Geo. 3. st. 1. c. 14. s. 5. I. when any select committee shall be so re-assembled after any proceedings before such commissioners, it shall be lawful for such select committee to send for all or any such books, papers, and records, or other written documents, as were produced in evidence before such commissioners, without directing any warrant to the chairman of the commissioners

Notice from speaker to committee to meet again.

42 Geo. 3. c. 106. s. 26. I.

To consider evidence transmitted.

Counsel may be heard before them.

s. 27.

The commissioners may be re-assembled.

47 Geo. 3. st. 1. c. 14. s. 5. I.

Power of commissioners to send for books, &c.

missioners, or without ordering the commissioners to reassemble, and proceed to try the merits of such petition, as directed by the 42 Geo. 3. c. 106. from the written minutes, &c.; but such select committee shall not call for, or receive in evidence any extracts from such books, &c. other than such as were received before such commissioners, nor to any matter not in issue before them.

Power of chairman of committee to summon witnesses.

42Geo.3.c.106.
s. 28. I.

The chairman of the committee is empowered by the former of these statutes (42 Geo. 3. c. 106. s. 28.) by warrant under his hand and seal directed to one constable or more, or to any other person specially appointed by such chairman, to summon and require the attendance of any witness, or other person before the commissioners, at the day and place to be mentioned in said warrant.

s. 29.

And to commit for contempt.

And by s. 29. if any person, so summoned as a witness, shall neglect or refuse to attend without lawful excuse, to be determined by the commissioners; or if any witness shall prevaricate or otherwise misbehave in giving or refusing to give evidence, or if any person shall be guilty of any contempt or misbehaviour towards the commissioners, while sitting and acting, the chairman shall by warrant under hand and seal, directed to the gaoler of the common gaol of the county or place in which the commissioners shall sit, commit such person (not being a peer of the realm or lord of parliament) to the custody of the gaoler, &c. for any time not exceeding 6 calendar months. But by s. 30. in case it shall be requisite to summon any member of parliament to give evidence before the commissioners, who shall be then attending his duty, the chairman of the commissioners shall certify the same to the speaker, who shall report it to the house.

s. 30.

Member of parliament, how summoned.

Commissioners, when and how paid.

42Geo.3.c.106.
s. 31 I.

By s. 31. immediately after the committee shall have made their final report to the house, each of the commissioners shall be entitled to receive from the lords commissioners of the treasury in Dublin £.200. for his attendance upon the execution of the commission, together with a guinea for every day he shall be necessarily engaged on said commission, and also his travelling expenses, at the rate of 1s. 6d. for every mile he shall have travelled from or to his usual place of abode, in his attendance on the execution of such commission. And

by

by the 42 Geo. 3. c. 106. s. 23 & 31. I. as amended by the 47 Geo. 3. st. 1. c. 14. s. 6 & 7. I. the clerk of the commissioners shall be paid by the parties interested, or their agents, or such of them as shall demand a copy of the minutes of the proceedings or evidence before the commissioners, *3d.* for each sheet of said copy consisting of 72 words; and such clerk shall be paid at the same rate by the lords commissioners of the treasury in Dublin, for the copies to be transmitted to the clerk of the crown in Ireland, and to the speaker of the house of commons; provided, however, that the sum so to be received from the parties, &c. or at the treasury, shall not in any instance exceed £50. for each such copy, containing as well the minutes of all proceedings, as of all evidence, given or produced before such commissioners.

42 Geo. 3. c. 106. s. 23 & 31. I.
47 Geo. 3. st. 1. c. 14. s. 6 & 7.

Payment of clerk.

By the 42 Geo. 3. c. 106. s. 28. I. any person that shall wilfully make any false oath or affidavit before the commissioners, or before any justice, touching any matter provided for by this act, shall on conviction be sent to the house of correction, to be kept at hard labour for any time not exceeding 7 years, or be transported, &c. for the like period. And by s. 32. the pecuniary penalties imposed by this act are to be recovered with full costs, by any person who shall sue for the same by action of debt in any court of record in Ireland; and in such action it shall be sufficient for the plaintiff to declare, that the defendant is indebted to him to the amount of the penalty sued for by virtue of this act. And by s. 33. every indictment, information, or action, for any offence against this act, or forfeiture incurred under the same, shall be found, filed, or commenced, within one year after the commission of the fact on which the same shall be grounded, or within 6 months after the conclusion of the proceedings in the house of commons relating to the petition, on the trial of which such fact shall have arisen.

Punishment of perjury.
42 Geo. 3. c. 106. s. 28. I.

s. 32.

Pecuniary penalties, how recovered.

s. 33.

Limitation for actions, &c.

IX. Next as to the *statutes which respect both houses of parliament.* The 30 Car. 2. st. 2. s. 2. Eng. enacts, that no peer of the realm, or member of the house of peers, shall vote or make his proxy in the house of peers, nor shall any member of the house of commons vote or sit therein during any debate, after their speaker is chosen, until such peer or member

§. 9.

Oaths of allegiance and supremacy to be taken by members.

30 Car. 2. st. 2. s. 2. Eng.

*Declaration
against transub-
stantiation
made, &c.*

ber shall first take the oaths of allegiance and supremacy, (since altered by the 1 W. & M. st. 1. c. 8. Eng. *post* ch. 10.) and make, subscribe, and audibly repeat the following declaration: "I, *A.B.* do solemnly and sincerely, in the presence of God, profess, testify, and declare, that I do believe, that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever; and that the invocation or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous; and I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or power whatsoever, should dispense with or annul the same, or declare that it was null or void from the beginning." Which oaths and declaration are, by s. 4.

*When and where
taken.*

to be solemnly and publicly made and subscribed, between the hours of 9 in the morning and 4 in the afternoon, by every such peer at the table in the middle of the house of peers, whilst a full house is there, with their speaker in his place; and by every member of the house of commons, whilst a full house is there sitting, with their speaker in his chair; and the same shall be done as each house is called over respectively. And by s. 6. any

s. 6.

Penalty for neglect.

peer, or member of either house, who shall offend contrary to this act, shall be adjudged a popish recusant convict, and forfeit and suffer accordingly; and be disabled to hold or execute any office or place, of profit or trust, civil or military, in England or Ireland, Wales, Berwick-upon-

upon Tweed, or any islands or foreign plantations belonging to the realm; and also be disabled from thenceforth to sit or vote in either house of parliament, or to make a proxy in the house of peers, or to sue or use any action, bill, plaint, or information in law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift; and shall forfeit for every wilful offence against this act, £500. to any person who shall sue for the same by action of debt, &c. at Westminster: And by s. 7. either house of parliament s. 7. may order any member to take such oaths, and to make and subscribe such declaration, at such time, and in such manner, as they shall appoint. *Either house may order member to take them.* And if any peer shall sit in the house of peers contrary to such order, he shall be incapable and disabled in law to sit or give any voice, by proxy or otherwise, in such house, during that parliament; and any member of the house of commons who shall not take said oaths, and subscribe said declaration, shall be disabled from sitting or giving any voice during that parliament. And by s. 8. where any member of the house of commons shall be so disabled to sit or vote in said house, the place of such member shall be void, without any further conviction or other proceedings; s. 8. *Seat of commoner void, without further proceeding.* and a new writ shall issue out of chancery, by warrant from the speaker, and by order of the house, for the election of a new member in his place. But it is provided by s. 5 & 13. that if any offender against this act shall take the said oaths, and subscribe the said declaration, in chancery, in the next term, between the hours of 9 and 12 in the forenoon, he shall be discharged from the penalties which he might otherwise sustain by virtue of this act as a popish recusant convict, and from all the disabilities and incapacities incurred thereby; but such freedom and discharge shall not extend to restore any such person to any office or place filled and supplied upon voidance by this act, nor to any other office, till after one year from the taking of such oath, &c., nor to discharge the said forfeiture of £500. By s. 11. during the time of taking the oaths, and making s. 5. & 13. *Taking oaths in next term, exempts from disabilities.* and subscribing the declaration, all other matters and s. 11. *No other proceeding during taking oaths.* proceedings,

Names recorded.

1 Geo. 1. st. 2. c. 13. s. 16. Eng.

Oath of abjuration to be taken in like manner.

s. 17.

Penalty for default.

Irish members required to take the same oaths, &c.

proceedings, as well in the said houses of parliament, as in the said court, shall cease; and the said oaths, &c. together with a schedule of the names of the persons who shall take and subscribe the same, shall be made, entered, and filed in parchment rolls, provided for the purpose by the clerk of each house, and by the clerk of the petty bag in chancery: and no peer or member shall pay any greater fee than 12*d.* to any such clerk, for the entry of taking said oaths, &c.; and the house of peers, house of commons, and court of chancery, are empowered and required, in the first place, all other business laid aside, to administer said oaths, &c. to every person duly demanding the same, according to this act. By the 1 Geo. 1. st. 2. c. 13. s. 16. Eng. no peer, or member of the house of peers, shall vote or make his proxy in the house of peers, or sit there during any debate; nor shall any member of the house of commons vote in the house of commons, or sit there during any debate after their speaker is chosen, until such peer or member shall have taken the oath of abjuration hereby prescribed, (which is since altered by the 6 Geo. 3. c. 53.) together with the oaths of allegiance, and supremacy, and the declaration against transubstantiation. And by s. 17. any peer or member of the house of peers, or member of the house of commons, who shall presume to vote, or make his proxy, not having taken and subscribed the oath of abjuration herein, shall be disabled to sue any action, bill, plaint, or information, in any court of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or be capable of any legacy or deed of gift, or to be in any office within the realm of Great Britain, or to vote at any election for members of parliament, and shall forfeit £500. to him that shall sue for the same by action of debt, &c. at Westminster, or by way of summar complaint before the court of sessions, or prosecution before the court of justiciary in Scotland. By this statute s. 33. (as well as the 1 Ann. st. 2. c. 17. Eng. and 3 W. & M. c. 2. s. 5. Eng.) the same oaths and declaration were likewise required to be repeated and subscribed by the members of parliament in Ireland: but the authority of these acts to bind Ireland

Ireland was not directly recognized till the 21 & 22 Geo. 3. 21 & 22 Geo. 3. c. 48. Ir. (commonly called Yelverton's act) was passed, by which all clauses and provisions contained in any statutes made in England or Great Britain, which relate to the taking any oath or oaths, or making or subscribing any declaration or affirmation in this kingdom, or any penalty or disability for omitting the same, shall be accepted, used, and executed in this kingdom, according to the tenor of the same respectively. And it is provided by the 4th article contained in the act for the union of Great Britain and Ireland, (40 Geo. 3. c. 38. Ir. & 40 Geo. 3. 40 Geo. 3. c. 38. Ir. c. 67. Eng.) that every lord of parliament of the united kingdom, and every member of the house of commons, shall, until the parliament of the united kingdom shall otherwise provide, take the oaths and make and subscribe the declaration, and take and subscribe the oath now by law enjoined to be taken, &c. by the lords and commons of the parliament of Great Britain; but no penalty is thereby expressly imposed on any member who shall be guilty of any default in this respect. A further incapacity to sit or vote in parliament, is created by the 12 & 13 W. 3. c. 2. s. 3. Eng. which excludes persons born out of England, Scotland, or Ireland, or the dominions thereunto belonging, although naturalized or made denizens, except such as are born of English parents, from being members of either house of parliament. The 19 & 20 Geo. 3. c. 29. Ir. which will be more particularly stated in another place, contains a similar or analogous provision. 12 & 13 W. 3. c. 2. s. 3. Eng. Aliens, &c. excluded. 19 & 20 Geo. 3. c. 29. Ir.

X. *With respect to the privileges of parliament.*—It is § 10. one which is common to the members of the house of lords and house of commons, that the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament, which is one of the provisions of the bill of rights, 1 W. & M. st. 2. c. 2. Eng. As to the peculiar protection afforded to members of parliament from assaults, the statutes which relate to this subject are reserved for a subsequent part of this work; and those statutes which concern their privileges in civil actions or suits, seem to fall more properly under consideration in the

Privileges of parliament.

1 W. & M. st. 2. c. 2. Eng.

the third part of this Digest; but with respect to criminal process it may be here observed, that the 45 Geo. 3. c. 4. s. 2. I.

Saving in statutes suspending Habeas Corpus Act.

9 Hen. 3.

Privilege of taking deer.

§ 11.

Method of making laws.

33 Hen. 8. c. 21. s. 3. Eng.

Royal assent.

s. 4.

33 Geo. 3. c. 13. Eng.

Time of receiving royal assent to be indorsed.

Act in force from such date, unless otherwise declared.

3. c. 4. s. 2. I. as well as the prior statutes which have from time to time suspended the *Habeas Corpus* Act in England, as well as Ireland, contains a provision to the following effect, that nothing therein contained shall be construed to extend to invalidate the ancient rights and privileges of parliament, or to the imprisoning or detaining any member of either house of parliament, during the sitting of such parliament, until the matter of which he stands suspected, be first communicated to the house of which he is a member, and the consent of said house obtained for his commitment or detaining. It is a peculiar privilege which was conferred on the lords of parliament by the Charter of the Forest, 9 Hen. 3. which provides, that it shall be lawful for any archbishop, bishop, earl, or baron, coming to the king by his summons or commandment, or returning, in passing through the king's forests, to take one or two of the king's deer, in view of the forester if he should be present, or otherwise on blowing a horn that he should not seem to do it by stealth.

XI. With respect to the method of making laws. The 33 Hen. 8. c. 21. Eng. which attainted queen Catharine and her accomplices of treason, contains a clause (s. 3.) declaring that the king's royal assent by his letters patent under his great seal, and signed with his hand, and declared and notified in his absence to the lords spiritual and temporal and to the commons assembled together in the high house, is and ever was of good strength and force, as if the king had been then personally present, and had openly assented to the same: and by s. 4. shall be good and effectual to all intents and purposes. By the 33 Geo. 3. c. 13. Eng. the clerk of the parliaments shall indorse, in English, on every act of parliament, immediately after the title of such act, the day, month, and year, when the same shall have passed, and shall have received the royal assent; and such indorsement shall be taken to be a part of such act, and to be the date of its commencement where no other commencement shall be therein provided. This statute contains in its preamble a reason

reason for its enactment, *viz.* that before the passing of this act, every act of parliament in which the commencement was not directed to be from a specific time, commenced from the first day of the session in which such act was passed. The 35 Geo. 3. c. 12. Ir. also provided, that the clerk of the parliament should write, (or cause, &c.) on the roll of every act of parliament, in English words, immediately after the title, the day, month, and year, when the same received the royal assent; and that all such acts should be deemed to commence from the day so written, unless another commencement should be expressly directed thereby. By the 41 Geo. 3. c. 105. I. & S. it shall be lawful for any one or more of the judges of Scotland, to whom any petition for any bill concerning lands, hereditaments, or other heritable subjects in Scotland, shall be referred by the lords spiritual and temporal in parliament assembled, and for any one or more of the judges of Ireland to whom any such petition concerning lands or other hereditaments in Ireland shall be referred, to examine upon oath all such witnesses as shall be produced before them, touching the matter of such petition and reference, and for that purpose to administer an oath; and every such oath shall be as effectual, and every person who shall take such oath shall be punishable for any false evidence he shall give under such oath, as if said oath had been administered at the bar of the house of lords.

35 Geo. 3. c. 12. Ir.

Analogous provision.

41 Geo. 3. c. 105. I. & S.

Private acts referred to judges.

XII. *Next as to those statutes which respect the adjournment, prorogation, and dissolution of parliament.* §. 12. It is provided by the 37 Geo. 3. c. 127. s. 1. Eng. that whenever the king shall, with the advice of his privy council, issue his proclamation for the meeting of parliament for dispatch of business, on any day not less than 14 days from the date of such proclamation, the same shall be sufficient notice to all persons, and the parliament shall stand prorogued to the day and place therein declared, notwithstanding any previous prorogation to any longer day. And by the 39 Geo. 3. st. 2. c. 14. Eng. the like power is given to the king of shortening the time for the meeting of parliament, in cases of the adjournment thereof; which also provides (s. 2.) that

Prerogative of the king in summoning parliament after prorogation.

37 Geo. 3. c. 127. s. 1. Eng.

39 Geo. 3. st. 2. c. 14. s. 1. Eng.

Same provision in cases of adjournment.

s. 2.

Provide.

every order which shall have been made by either house of parliament, and appointed for the day to which such house shall have adjourned, or to any day subsequent thereto, (except any order specially appointed for particular days, and declared to be so fixed notwithstanding any meeting of parliament under this act, and except also any order made under any act of parliament,) shall be deemed to have been appointed for the day on which the parliament shall meet in pursuance of such proclamation.

Upon demise of king, parliament to continue to sit for 6 months.

6 Ann. c. 7. s. 4. Eng.

* "Calendar" added in 1 Geo. 2. c. 7. Ir.

s. 5.

Or to meet and sit, &c. if then prorogued or adjourned.

The 6 Ann. c. 7. Eng. provides, (s. 4.) that parliament shall not be dissolved by the death or demise of the crown, but shall continue, and if sitting at the time of such demise shall immediately proceed to act, notwithstanding such death, &c. for *6 months, and no longer, unless the same be sooner prorogued or dissolved by such person to whom the crown shall come according to the acts for limiting the succession; and if said parliament shall be prorogued, then it shall meet and sit on the day unto which it shall be prorogued, and continue for the residue of said 6 months, unless sooner prorogued or dissolved as aforesaid. And by s. 5. if there be a parliament in being at the death of her majesty, &c. but the same happens to be separated by adjournment [†or prorogation,] such parliament shall immediately after such demise meet, convene, and sit, and shall act notwithstanding such death or demise, for 6* months, and no longer, unless the same shall be sooner prorogued or dissolved as aforesaid. The 1 Geo. 2. c. 7. Ir. contains clauses nearly corresponding.

The 37 Geo. 3. c. 127. Eng. provides for the case of the demise of the king subsequent to the dissolution or expiration of a parliament, and before the day appointed by the writs for assembling a new parliament, and enacts (s. 3.) that in such case the last preceding parliament shall immediately convene and sit at Westminster, and be a parliament to continue for 6 months and no longer, but subject to be sooner prorogued or dissolved by the person to whom the crown shall come, according to the acts for limiting

† By the 1 Geo. 2. c. 7. Ir. if parliament be separated by prorogation it may meet at such time, within 6 calendar months, and at such place, as the successor to the crown shall appoint by proclamation, and may act during the residue of said 6 months unless sooner dissolved or prorogued.

limiting the succession to the same. By s. 5. in case of the demise of the king on the day appointed by the writs of summons for calling a new parliament, or at any time after, and before such new parliament shall have met and sat, such new parliament shall, immediately after such demise, convene and sit at Wesminster, and be a parliament to continue for 6 months, but subject to be sooner prorogued or dissolved as aforesaid; and by s. 4. in case of the demise of any such successor within the 6 months so limited (by s.3.) for the duration of the last preceding parliament, and before the same shall have been dissolved by such successor, or after the same shall have been so dissolved, and before a new parliament shall have met as hereby provided, in every such case the said last preceding parliament shall immediately convene and sit for 6 months longer, to be computed from such last mentioned demise; but subject to be sooner prorogued or dissolved by the person who shall then succeed to the crown, and so as often as any such demise shall happen before a new parliament shall have met as hereby provided. The 38 Geo. 3. c. 20. Ir. contained provisions in respect to the parliament of Ireland, corresponding to those of the 37 Geo. 3. c. 127. Eng.

s. 5.

s. 4.

Or of successor.

38 Geo. 3. c. 20.
Ir.

XIII. The duration of parliament, which was limited to 3 years by the 6 W. & M. c. 2. Eng. is by the 1 Geo. 1. st. 2. c. 38. Eng. to have continuance for *seven* years, from the day on which by the writ of summons it shall be appointed to meet, unless sooner dissolved by the king. The duration of the Irish parliament was limited to *eight* years, by the 7 Geo. 3. c. 3. Ir. The act of union, 40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng. has declared that the united kingdom shall be represented in one and the same parliament, to be styled the parliament of the united kingdom of Great Britain and Ireland; but these acts do not contain any provision as to the duration of the imperial parliament, except as to the first parliament, which by the 4th article was to continue to sit, if not sooner dissolved, as long as the *then* present parliament of Great Britain was to continue, &c. It seems to be an omission in the act of union, not to have

§ 13.

Duration of
parliament.1 Geo. 1. st. 2.
c. 38. Eng.

7 Geo. 3. c. 3. Ir.

Duration of im-
perial parlia-
ment not limited

provided that the laws which respected the meeting and duration of the parliament of Great Britain, the penalties for not taking the oaths, the mode of passing laws, and giving the royal assent thereto, &c. should be extended to the parliament of the united kingdom, and to all the members thereof, as the laws which respected the parliament of Ireland were in these respects different. This omission does not seem to be supplied by the 8th article of the union, which provides that all laws in force at the time of the union within the respective kingdoms, shall remain as then established, subject to such alterations as circumstances may appear to the parliament of the united kingdom to require.

CHAP. III.

Of the King, and his Title.

*Title to the
crown of Great
Britain and
Ireland.*

THE historical deduction of the title to the crown of Great Britain, from which Sir William Blackstone infers its hereditary or descendible quality, subject however to the limitations of parliament, applies equally to the kingdom of Ireland; which, though a distinct dominion, and having an independent parliament of its own, was certainly subject to the kings of England as lords and kings of Ireland. It may be proper, however, to point out the several recognitions of the king's title by the parliament of Ireland. The act of faculties, 28 Hen. 8. c. 19. Ir. which abolishes the dispensing power and other usurpations of the pope, recites (s. 20.) that the king's land of Ireland is his proper dominion, and a member appending and rightfully belonging to the imperial crown of the realm of England, and united to the same. And the 33 Hen. 8. c. 1. Ir. further recites that the king's progenitors had all manner of kingly jurisdiction and authority royal by the name of *lords* of Ireland, but that by reason of not being styled *kings* of Ireland,

Ireland, the inhabitants of Ireland did not shew the allegiance which was due to the king or his progenitors, and therefore enacts, that the king and his successors, kings of England, shall be always kings of Ireland, and shall have the name, stile, title, and power of kings of Ireland, with all manner of honours, pre-eminences, prerogatives, dignities, and other things appertaining to the estate and majesty of a king imperial, as united and knit to the imperial crown of the realm of England. But independent of the general recognition of the title of the kings of England to the crown of Ireland, there have been also special acts of confirmation passed in Ireland similar to those in England. The 7 Hen. 4. c. 2. Eng. which limited the succession of the crown to the heirs of the body of that prince, and those acts of Henry VIII. (28 Hen. 8. c. 7. Eng. & 35 Hen. 8. c. 1. Eng.) which bastardized his daughters Elizabeth and Mary, and again legitimated them, were none of them followed by any corresponding statutes in Ireland: but the 1 Mar. st. 2. c. 1. Eng. which declared the queen to have been born in lawful matrimony, and repealed all acts of parliament and sentences of divorce to the contrary, was followed by the 3 & 4 Ph. & M. c. 13. Ir. And the 3 & 4 Ph. & M. c. 14. Ir. which recognized the hereditary rights of queen Mary to the crown, as the very true and undoubted heir and inheritrix thereof, is a transcript of the 1 Mar. st. 3. c. 1. Eng. The title of queen Elizabeth to the succession, as limited by the 35 Hen. 8. c. 1. Eng. was recognized and adopted by the 2 Eliz. c. 5. Ir. And the 11, 12 & 13 Jac. 1. c. 1. Ir. was in like manner as the 2 Jac. 1. c. 4. Eng. a recognition of the lawful, undoubted, and absolute title of James I. to the crown of Ireland, as being lineally the next and sole heir of the blood royal of the kings and queens of England, France, and Ireland. The parliament of Ireland, by the 13 Car. 2. c. 1. Ir. declared their renunciation and abhorrence of the rebellious and traitorous murder and parricide of king Charles I. and recognized and acknowledged that the kingdom of Ireland did by lineal descent, and inherent birth-right, and lawful and undoubted inheritance and succession,
* descend

descend and come unto his majesty king Charles II. Which act followed the 12 Car. 2. c. 12. Eng. By the 4 W. & M. c. 1. Ir. this kingdom was also declared to be annexed and united to the imperial crown of England, and by the laws and statutes of this kingdom, justly and rightfully depending upon, and belonging and for ever united to the same; and this act accordingly recognizes the right and title of king William and queen Mary, as king and queen of England, to the kingdom of Ireland. And the 2 Ann. c. 5. Ir. recites and adopts the 1 W. & M. st. 2. c. 2. Eng. by which the succession of the crown was limited to the issue of queen Mary, the princess Anne of Denmark, (afterwards queen Anne,) and of king William, successively; and further recites the Act of Settlement, 12 & 13 W. 3. c. 2. Eng. by which the imperial crown of England, France, and Ireland, was limited, after the decease of king William, and of the princess Anne of Denmark, without issue respectively, to the princess Sophia, (electress and duchess dowager of Hanover, daughter of Elizabeth queen of Bohemia, who was the daughter of king James the first,) and the heirs of her body, being protestants. The last act of recognition of the title of the king by the parliament of Ireland, is the 2 Geo. 1. c. 2. Ir. which declared that the kingdom of Ireland was rightfully and lawfully invested in his majesty king George, and that immediately upon the decease of queen Anne, he was, and of right ought to be, king of Great Britain, Ireland, and France, and the dominions and territories thereunto belonging.

Succession settled upon the union with Scotland.

5 Ann. c. 8. Eng.

40 Geo. 3. c. 38. Ir.

40 Geo. 3. c. 67. Eng.

Upon the union with Scotland, the 2d article of the act of union, 5 Ann. c. 8. Eng. declared, that the succession of the monarchy of the united kingdom of Great Britain, and of the dominions thereunto belonging, should remain and continue to the princess Sophia, and the heirs of her body, being protestants, according to the limitations and provisions of the 12 & 13 W. 3. c. 2. Eng. and 1 W. & M. st. 2. c. 2. Eng. And upon the union of Great Britain and Ireland, it was also provided by the 2d article of the 40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng. that the succession to the imperial crown of the united kingdom, shall

shall continue limited and settled, in the same manner as the succession to the imperial crown of the kingdom of Great Britain and Ireland now stands limited and settled, according to the existing laws, and to the terms of union between England and Scotland. And the first article is to be here stated, which provides, that the kingdoms of great Britain and Ireland shall be united into one kingdom, by the name of "the united kingdom of Great Britain and Ireland," and that the royal stile and titles appertaining to the imperial crown of the said united kingdom, and its dependencies, and also the ensigns, armorial flags, and banners thereof, shall be such as his majesty, by his royal proclamation under the great seal of the united kingdom, shall be pleased to appoint. It is one of the provisions of the Bill of Rights, 1 W. & M. st. 2. c. 2. Eng. that every person that shall be reconciled to or hold communion with the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and for ever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to exercise any regal power within the same, and that in every such case the people shall be absolved of their allegiance, and the crown shall descend to such person, being protestant, as should have inherited the same, in case the person so reconciled, holding communion, or professing, or marrying, were naturally dead.

Succession limited upon union with Ireland.

1 W. & M. st. 2. c. 2. s. 9. Eng.

Papists excluded from succeeding to the throne.

As to the inheritable quality of the crown, the 25 Edw. 3. st. 2. E. & I. declares, that the law of England is, and always hath been, that the children of the kings of England, in whatsoever parts they be born, in England or elsewhere, ought to bear the inheritance after the death of their ancestors, which law, the king, the prelates, earls, and barons, and other great men, together with all the commons in parliament assembled, do approve and affirm for ever. The 13 Eliz. c. 1. Eng. which made it high treason during the life of the queen, and a misdemeanor afterwards, to deny the authority of parliament to limit and bind the crown, and the descent thereof

Inheritable quality of the crown.

25 Edw. 3. st. 2. E. & I.

1 Mar. st. 3.
c. 1. Eng.
3 & 4 Ph. & M.
c. 14. Ir.

*Succession of fe-
males.*

thereof, was of a temporary nature: But the 6 Ann. c. 7. Eng. which relates to this offence, will be stated in another place. And with respect to the succession of females to the crown, the 1 Mar. st. 3. c. 1. Eng. and 3 & 4 Ph. & M. c. 14. Ir. declare and enact, that the law of the realm is and ever hath been, that the kingly and royal office, and all prerogatives, &c. thereunto annexed, are as fully invested in females as in males, and that where by any law or statute, the king is to do any thing, or any punishment is limited for offenders against the king, the queen may in like manner do, have, or execute the same.

CHAP. IV.

Of the King's Royal Family.

*Marriages of
the royal family
without consent
restrained.*

12 Geo. 3. c. 11.
Eng.

THE statute of treason, 25 Edw. 3. st. 5. c. 2. E. & I. is reserved for the fourth part of this digest; and the 31 Hen. 8. c. 10. Eng. which regulates the precedence of the royal family, as well as of other peers and great officers, in the high court of parliament, will be also found in another place. The only statute* therefore which seems to be referable to this head, is the 12 Geo. 3. c. 11. Eng. which enacts, that no descendant of the body of king George II. male or female, (other than the issue of princesses who have married or may hereafter marry into foreign families) shall be capable of contracting matrimony without the previous consent of the king, signified under the great seal, and declared in council, (which consent is hereby directed to be set out in the license and register of marriage, and to be entered in the books of the privy council,) and that

* The 5 Geo. 3. c. 27. Eng. which provided for the administration of the government in case the crown should descend to any of the children of his majesty, being under the age of 18 years, and for the care and guardianship of their persons, is superseded by the event of their having all attained their full age.

that every marriage, or matrimonial contract, of any such descendant, without such consent first had, shall be null and void. But by s. 2. any such descendant being above the age of 25 years, who shall persist in his or her resolution to contract a marriage disapproved of by the king, may, upon giving notice to the privy council, after 12 calendar months from such notice, contract such marriage, which may be accordingly solemnized without the previous consent of the crown, unless both houses of parliament shall, before the expiration of the 12 months, declare their disapprobation of such intended marriage. And by s. 3. any person who shall knowingly or wilfully solemnize, or assist or be present at the celebration of any marriage with any such descendant, or at the making any matrimonial contract without such consent as aforesaid, shall incur the penalties of the statute of provision and of *præmunire*, 16 Ric. 2. c. 5. No Irish statute provides for such offences.

s. 2.

Exception as to those above 25 years old.

s. 3.

Penalty of solemnizing, &c. such prohibited marriages.

CHAP. V.

Of the Councils belonging to the King.

AS to the qualification of members to sit at the privy council (which is the principal council belonging to the king), the clause of the Act of Settlement, 12 & 13 W. 3. c. 2. Eng. which respects aliens, and amongst the other disabilities which it creates, incapacitates them, although naturalized or made denizens, from being of the privy council, will be particularly stated in another place; and with respect to the privileges of privy counsellors, those statutes are also reserved for future consideration, which protect them from assaults, and against attempts and conspiracies to destroy their lives. As to the dissolution of the privy council, the 6 Ann. c. 7. s. 8. Eng. provides that the privy council shall not be determined or be dissolved by the death or demise of the king, but such privy council shall continue and act as such for six months after such demise, unless sooner determined by the next successor.

Councils belonging to the King.

12 & 13 W. 3. c. 2. Eng.

Aliens not to be of the privy council.

6 Ann. c. 7. s. 8. Eng.

Privy council not dissolved by death of king.

cessor. No Irish act contains any corresponding provision in respect to the privy council of Ireland; but this statute of Anne may perhaps have been in the contemplation of the Irish legislature, when by the 21 & 22 Geo. 21 & 22 Geo. 3. 3. c. 48. s. 3. Ir. it was enacted, that all such statutes made in England as related to the continuance of offices, civil or military, in case of the demise of the king, should be accepted used and executed in Ireland according to their tenor. It is a provision of the 8th article of the act of union, that his majesty may continue the privy council of Ireland as long as he shall think fit.

40Geo.3.c.38.
Ir.
40Geo.3.c.67.
Eng.

CHAP. VI.

Of the King's Duties.

The king's duties **T**HE duties of the British monarch to his people, viz. of governing according to law, of executing judgment in mercy, and of maintaining the established religion, are expressly declared by the coronation oath established by the 1 W. & M. st. 1. c. 6. Eng. which is conceived in the following words, viz. :—" *The archbishop or bishop shall say*, Will you solemnly promise and swear to govern the people of this kingdom of England and the dominions thereunto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same?—*The king or queen shall say*, I solemnly promise so to do.—*Archbishop or bishop*, Will you to your power cause law and justice in mercy to be executed in all your judgments?—*King or queen*, I will.—*Archbishop or bishop*, Will you, to the utmost of your power, maintain the laws of God, the true profession of the gospel and the protestant reformed religion established by law? and will you preserve unto the bishops and clergy of this realm, and the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them?—*King or queen*, All this I promise to do. *After this the king or queen, laying his or her hand upon*

" the

1 W. & M. st. 1.
c. 6. Eng.

Coronation oath.

“ *the holy gospels; shall say, The things which I have*
 “ *here before promised, I will perform and keep: So*
 “ *help me God!—And then kiss the book.*” Which oath
 is required to be administered to every king or queen,
 who shall succeed to the imperial crown of the realm, by
 one of the archbishops or bishops to be appointed by the
 king or queen for that purpose, in the presence of all
 persons assisting or present. The Bill of Rights, 1
 W. & M. st. 2. c. 2. Eng. enacts, (s. 10.) that every king 1W. & M. st. 2.
c. 2. s. 10. Eng.
 and queen who shall come to and succeed in the imperial
 crown, shall, on the first day of the meeting of the first King to make
the declaration
against popery
in parliament.
 parliament next after his or her coming to the crown,
 sitting in his or her throne in the house of peers, in the
 presence of the lords and commons therein assembled,
 or at his or her coronation, before such person or per-
 sons who shall administer the coronation oath, at the
 time of taking the said oath, (which shall first happen)
 make, subscribe, and audibly repeat the declaration
 mentioned in the 30 Car. 2. st. 2.* But if such king or * Vide p. 140;
 queen, upon his or her succession to the crown of this Proviso as to
minority.
 realm, shall be under the age of 12 years, then such
 king or queen shall make, &c. said declaration, at his or
 her coronation, on the first day of the meeting of the
 first parliament, which shall first happen after such king
 or queen shall have attained the age of 12 years. Which
 provision of this statute is confirmed by the Act of
 Settlement 12 & 13 W. 3. c. 2. Eng. which provides 12 & 13 W. 3.
c. 2. s. 3. Eng.
 (s. 3.) that whosoever shall come to the possession of
 the crown, shall join in communion with the church of King to be of
the church of
England.
 England as by law established. The 25th article of the 5 Ann. c. 8. Eng.
 act of union, 5 Ann. c. 8. Eng. recites and confirms an
 act of the parliament of Scotland for securing the protes-
 tant religion, and presbyterian church government, within Religion and
church govern-
ment of Scot-
land to be main-
tained.
 the kingdom of Scotland, and provides and declares, that
 the true protestant religion contained in the confession
 of faith (which was ratified, approved, and confirmed by
 the fifth act of the first parliament of king William and
 queen Mary) with the form and purity of worship pre-
 sently in use within this church, and its presbyterian
 church government and discipline, (that is to say) the go-
 vernment of the church by kirk-sessions, presbyteries,
 * provincial

Oath to maintain it.

5 Ann. c. 5.
Eng.

Oath to maintain church of England.

40 Geo. 3. c. 38.
Ir

40 Geo. 3. c. 67.
Eng.

United church of England and Ireland established.

provincial synods, and general assemblies, established by this and other acts of parliament, pursuant to the claim of right, bearing date 11th April, 1689, shall remain and continue unalterable, and that the said presbyterian government shall be the only government of the church within the kingdom of Scotland. And this statute enacts, that the successive sovereigns of Great Britain shall, at their succession to the crown, swear and subscribe, that they shall inviolably maintain and preserve the settlement of the true protestant religion, with the government, worship, discipline, rights, and privileges of the church of Scotland, as established by the laws of Scotland, in prosecution of the claim of right; and this article of the act of union also recites and incorporates the 5 Ann. c. 5. Eng. by which it is enacted that every king and queen of Great Britain, shall, at his or her coronation, in the presence of all persons who shall be then and there attending, assisting, or otherwise then and there present, take and subscribe an oath to maintain and preserve, inviolably, the settlement of the church of England, and the doctrine, worship, discipline, and government thereof, as by law established, within the kingdoms of England, and Ireland, the dominion of Wales, the town of Berwick upon Tweed, and the territories thereunto belonging. The 5th article of the act for the union of Great Britain and Ireland, 40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng. provides, that the churches of England and Ireland as now by law established, shall be united into one protestant episcopal church, to be called the united church of England and Ireland, and that the doctrine, worship, discipline, and government of the said united church, shall be, and shall remain in full force for ever, as the same are now by law established for the church of England, and that the continuance and preservation of the said united church, as the established church of England and Ireland, shall be deemed to be an essential and fundamental part of the union, and that in like manner the doctrine, worship, discipline, and government of the church of Scotland, shall remain and be preserved, as the same are now established by law, and by the acts for the union of England and Scotland.

CHAP.

CHAP. VII.

Of the King's Prerogative.

THE prerogative of the king as a constituent part of §. 1. 2 & 3. the parliament has been already adverted to *ante* p. 13. Prerogative as And the statutes which regard the king's prerogative of to granting letters of marque, sending *ambassadors* to foreign states, and receiving them &c. at home, as well as of granting letters of *safe conduct*, will 4 Hen. 5. c. 7. E. & L. be found in the subsequent parts of this work. But with respect to letters of *marque and reprisal*, the 4 Hen. 5. c. 7. E. & L. is to be here stated, which provides, that if any subjects aggrieved against the tenor of any truce between the king and his enemies, shall complain to the keeper of the privy seal, he shall make out letters of request, under the privy seal, and if after such request made, the party required do not make, within a convenient time, due restitution or satisfaction to the party grieved, then the chancellor shall make out letters of marque, under the great seal, for the party grieved.

IV. The 13 Car. 2. st. 1. c. 6. Eng. recognizes the §. 4. king as the *generalissimo* or first in military command The king generalissimo. within the kingdom. The preamble to this act declares, 13 Car. 2. st. 1. c. 6. Eng. that within all his majesty's realms and dominions, the sole supreme government, command, and disposition of the militia, and of all the forces by sea and land, and of all forts and places of strength, is, and by the laws of England ever was, the undoubted right of his majesty, and his royal predecessors, and that both or either of the houses of parliament cannot nor ought to pretend to the same; nor can nor lawfully may raise or levy any war, offensive or defensive, against his majesty, his heirs or lawful successors. But this prerogative of the king is in some measure restrained or defined by the 6th article of the Bill of Rights, 1 W. & M. st. 2. c. 2. Eng. 1 W. & M. st. 2. c. 2. Eng. which provides, that the raising or keeping a standing army, within the kingdom, in time of peace, unless it be with consent of parliament, is against law. And the

12 & 13 W. 3. the Act of Settlement, 12 & 13 W. 3. c. 2. s. 3. Eng. c. 2. s. 3. Eng.

People not obliged to engage in war for king's private dominions.

provides, that in case the crown and imperial dignity of this realm shall hereafter come to any person, not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament. And the statutes under authority of which the militia force is raised or embodied, (which will be more particularly mentioned in another place) provide not only against their being carried out of Great Britain, but also impose a salutary restraint upon any abuse of this prerogative, by requiring a communication to be made to parliament of the calling out of this portion of the military force of the kingdom. No statute in Ireland contains any clauses similar to those of the 13 Car. 2. st. 1. c. 6. 1 W. & M. st. 2. c. 2. and 12 & 13 W. 3. c. 2. s. 3. but they may be considered as declaratory of the constitutional law of the empire.

§. 5.

King's prerogative in appointing judges, &c.

27 Hen. 8. c. 24. s. 1 & 2. Eng.

V. The 27 Hen. 8. c. 24. Eng. considers the king as the fountain of justice and general conservator of the peace of the kingdom. This statute recites, that divers of the most ancient prerogatives and authorities of justice appertaining to the imperial crown of the realm, had been severed from the same by sundry gifts of the king's progenitors; and accordingly provides, (s. 2.) that no person, of any estate, degree, or condition, shall have any power or authority to make any justices of eyre, justices of assize, justices of peace, or justices of gaol delivery; but that all such officers and ministers shall be made by letters patent under the king's great seal, in the name of the king, in all shires, counties palatine, and other places of the realm: To which I do not find any corresponding

1 Ann. st. 1. c. 8. Eng.

6 Ann. c. 7. Eng.

12 & 13 W. 3. c. 2. s. 3. Eng.

Judges commissions quam diu se bene gesserint.

statute in Ireland. The 1 Ann. st. 1. c. 8. Eng. and 6 Ann. c. 7. Eng. are connected also with this branch of the king's prerogative; but are reserved for other parts of this work. It is a provision of the Act of Settlement (12 & 13 W. 3. c. 2. Eng.) proper to be stated in this place, that judges commissions be made *quam diu se bene gesserint*, and their salaries ascertained and established; but upon the address of both houses of parliament

liament

liament it may be lawful to remove them. And the 1 Geo. 3. c. 23. Eng. recites, "that his majesty had been graciously pleased to declare from the throne to both houses of parliament, that he looked upon the independency and uprightness of judges, as essential to the impartial administration of justice, as one of the best securities to the rights and liberties of the subjects, and as most conducive to the honor of the crown," and accordingly provides, that their commissions shall continue in force during their good behaviour, notwithstanding the demise of the king: and by s. 3. the salaries settled upon the judges by act of parliament, or granted by the king, shall be payable so long as their patents or commissions shall continue in force: but this act also provides, (s. 2.) that it shall be lawful for the king to remove any judge upon the address of both houses of parliament. The 21 & 22 Geo. 3. c. 50. Ir. incorporates the provisions of both those statutes in respect to the judges of Ireland. And the 41 Geo. 3. c. 25. I. provides, that it shall be lawful for the king, by letters patent under the great seal of the united kingdom, to grant the commission of master of the rolls of Ireland, unto any person, *quam diu se bene gesserit*, and to provide that such commission shall continue in force during his good behaviour, notwithstanding any demise of the king. Provided (s. 9.) that it may be lawful for the king to remove any master of the rolls, upon an address of both houses of parliament. And by the 23 & 24 Geo. 3. c. 41. Ir. the king is empowered to appoint, under the great seal of Ireland, the judge of the high court of admiralty, to hold said office so long as he shall behave himself well therein; who shall have power to hear and determine all civil, maritime, and other causes, to the jurisdiction of said court belonging: Provided (s. 2.) that it shall be lawful for the king to remove such judge, upon the address of both houses of parliament. And the 38 Geo. 3. c. 65. s. 1 & 3. Ir. which enables the king to appoint, by letters patent under the great seal of this kingdom, one of his counsel to be chairman of the session of the peace in the county of Dublin, provides, that he

1 Geo. 3. c. 23.
Eng.*Commissions not
dependent upon
the life of the
king*

s. 3.

s. 2.

*Proviso.*21 & 22 Geo. 3.
c. 50. s. 6. Ir.*Judges of Ire-
land.*41 Geo. 3. c. 25.
s. 1. 1.*Master of the
rolls.*

s. 9.

23 & 24 Geo. 3.
c. 14. s. 1. Ir.*Judge of the
admiralty.*

s. 2.

38 Geo. 3. c. 65.
s. 1 & 3. Ir.*Chairman of
county Dublin
sessions.*

he shall continue to hold said office, and receive the salary thereunto annexed, during his good behaviour, and notwithstanding the demise of the king: but by s. 4. it shall be lawful for the king, or chief governor, to remove him, upon the address of both houses of parliament.

§. 6.

The king as arbiter of commerce appoints ports and havens
4 Hen. 4. c. 20. E. & I.

1 Eliz. c. 11. s. 2. Eng.
13 & 14 Car. 2. c. 11. s. 14. Eng.

14 & 15 Car. 2. c. 9. s. 5. Ir.

And regulates weights and measures

9 Hen. 3. c. 25. E. & I.

51 Hen. 3. st. 1. E. & I.

31 Edw. 1. E. & I.

VI. Next as to the king's prerogative, as the *arbiter* of domestic commerce. It was enacted by the 4 Hen. 4. c. 20. E. & I. that all manner of merchandize entering into the realm of England, or going out of the same, should be charged or discharged in the great ports of the sea, and not in creeks or small harbours upon rivers, unless compelled thereto by tempest, upon pain of forfeiting the merchandize so laden or unladen, &c. And by the 1 Eliz. c. 11. s. 2. Eng. as amended by the 13 & 14 Car. 2. c. 11. s. 14. Eng. the king may by his commission out of the court of exchequer, assign such places, ports, members, and creeks, (except the town of Hull) as shall be lawful for the landing and discharging, lading or shipping, of any goods, wares, or merchandizes, within England, &c. and appoint the extent and limits of such ports, &c. The 14 & 15 Car. 2. c. 9. s. 5. Ir. contains a similar provision, prohibiting any goods, &c. upon pain of forfeiture, to be laden into or discharged from any vessel, (not being in leak or wreck,) except in and upon such open quay or wharf, as the lord lieutenant or privy council shall appoint, within the port of Dublin, and within the other ports, creeks, havens, or roads of Ireland, where a customer, comptroller, and searcher of such ports, &c. shall be resident.

The statutes concerning the regulation of weights and measures, may be referred to this view of the prerogative. It was one of the provisions of the Great Charter, 9 Hen. 3. c. 25. E. & I. that there should be one measure of wine, ale, and corn, to wit the quarter of London, throughout the realm; and that there should be also an uniformity of weights, as well as measures. By the 51 Hen. 3. st. 1. E. & I. and 31 Edw. 1. E. & I. the following are the measures of the king, as thereby settled and defined; an English penny, round and without clipping, shall weigh 32 wheat corns in the midst of the ear, 20*d*. shall make an ounce, 12 ounces a pound, 8 pounds

8 pounds a gallon of wine, and 8 gallons of wine a London bushel, which is the 8th part of a quarter. By the 2 Hen. 6. c. 11. E. & I. the tun of wine is to contain of English measure 252 gallons, and the pipe 126 gallons. 2 Hen. 6. c. 11. E. & I.

But by the 12 Hen. 7. c. 5. Eng. the bushel is to contain 8 gallons of wheat, the gallon 8 pounds of wheat troy weight, and every pound 12 ounces of troy weight, every ounce 20 sterlings, and every sterling 32 corns of wheat in the midst of the ear. And by the 13 & 14 W. 3. c. 5. s. 28. Eng. the Winchester bushel is defined to be a round bushel with a plain bottom, $18\frac{1}{2}$ inches wide throughout, and 8 inches deep. By the *compositio ulnar. et pert. incertit temporis* 3 grains of barley dry and round make one inch, 12 inches a foot, 3 feet a yard, 5 yards make a perch, and 40 perches and 4 in breadth make an acre. 13 & 14 W. 3. c. 5. s. 28. Eng.

By the 25 Edw. 3. st. 5. c. 9. E. & I. the sack of wool shall weigh but 26 stone, every stone 14 pounds. And by the 11 Hen. 7. c. 4. Eng. the water measure within ship board shall only contain 5 pecks. 25 Edw. 3. st. 5. c. 9. E. & I.

By several ancient statutes, and in particular 8 Hen. 6. c. 5. 11 Hen. 7. c. 4. and 12 Hen. 7. c. 5. weights and measures of brass according to the standard of the exchequer were required to be kept by the mayors and other head officers of cities, &c. And the 16 Car. 1. c. 19. Eng. enacts (s. 2.) that there shall be one weight and one measure, according to the standard of the exchequer, throughout the realm; and every measure of corn shall be striked without heap; and whosoever shall sell by, or keep any other weight or measure, whereby any thing is bought or sold, shall forfeit for every offence 5s. being convicted by the oath of a witness, before a justice of peace, mayor, or other head officer of the county, &c.; which forfeiture shall be levied by the church-wardens and overseers of the poor (or any of them) where the offence shall be committed, to the use of the poor, by distress, &c.; and in default of distress, such justice, &c. may commit the offender to prison, until he pay the sum forfeited. 16 Car. 1. c. 19. s. 2. Eng.

Provided (s. 7.) that this act shall not extend to the measure of rent-corn, nor to water measure in ports: But by the 22 Car. 2. c. 8. s. 2. Eng. this provision of the 16 Car. 1. shall be repealed as to the measuring of corn, ground or unground, or salt; 22 Car. 2. c. 8. s. 2. Eng.

Penalty for using weights or measures different from the king's standard.

s. 7.

*Corn and salt to
be sold by the
Winchester
measure.*

s. 5.

*Measures of
brass to be kept
in cities, &c.*

s. 8.

Toll how taken.

*Weights in
Ireland.*

4 Ann. c. 14. Ir.

and if any person shall sell any corn or salt, usually sold by the bushel, by any other measure than that which is agreeable to the standard in the exchequer, called the Winchester measure, containing 8 gallons to the bushel, struck even by the brim by the seller, and sealed, he shall forfeit 40s. to be levied as in said act, by warrant of any justice of peace of the county, &c. And this statute provides (s. 5.) that at the charge of such persons who shall have the profit of the market within any city, corporation or market town, there shall be one measure of brass provided and chained in the public market-place, upon pain to forfeit for every person so neglecting £5. upon conviction by presentment or indictment, before the justices of peace of the county at the general sessions; one moiety to the poor of the parish, the other to him that shall sue for the same. And by s. 8. no person shall take any toll, but according to such proportion as the measures in this act bear unto the measures whereby the same have been usually taken. The duties of clerks of the market, and other officers, in execution of these acts, are enforced in such manner as will be stated in another place.

The 4 Ann. c. 14. Ir. is the first act that prescribes any uniform standard for weights in Ireland: and this act recites, that there were great diversities of weights throughout the kingdom, and no true or certain balance or weights in any part thereof; and therefore enacts, that there shall be one weight throughout the kingdom, for weighing all sorts of merchandize between buyer and seller, and that the same shall be according to the pound of avoirdupois weight, except for bread, gold, silver, and druggists' and apothecaries' wares; and that all manner of merchandizes shall be weighed by balance, so that the tongue of the balance be even; and for this purpose provides (s. 2.) that a set of true and just weights, that is to say one ounce, one pound, one 4 pound, one 7 pound, one 14 pound, one 28 pound, one half hundred weight or 56 pound, should be made of brass, and marked with the letters A R with the crown over them, and be lodged in the exchequer, in the custody of the lord treasurer or vice treasurer of Ireland for the time being; and that corresponding weights

weights of brass should be also provided in every city and town that were counties of themselves, at the charge of said cities and towns, and in every county in Ireland at the charge of such counties, to be sealed by the officer in whose custody the standard weights are, with the same seal as said standard weights, which weights shall remain in the custody of the mayor for the time being in each city and town that are counties by themselves, and in counties at large in the principal towns named and appointed by this act, by which standards all the weights in said counties, &c. are to be tried, sized, and regulated. And this act further directs, (s. 3.) that a weighmaster shall be appointed in every city, borough, and market town, by the chief magistrate of the same, except in places where the toll and customs belong to any other person, and in such case by such persons; which weighmaster shall be sworn justly, truly, and indifferently to weigh all goods, wares, and merchandizes, as shall be brought unto him between buyer and seller; and the fee for each draught weighing under a hundred weight is $\frac{1}{2}d.$ and for a hundred, &c. or upwards, $1d.$: a true balance or iron beam with scales and weights was by s. 4. to be provided in each city, &c. at the expense of such city, &c. or of the person entitled to the tolls, &c. The penalty for using other weights, is 40s. by s. 6. of this act. With respect to measures in Ireland, the 7 W. 3. c. 24. s. 1. & 2. Ir. enacts that one and the same measure shall be used throughout the kingdom, and shall contain the following quantities, viz. the peck 2 gallons, the bushel 8 gallons, the half barrel 16 gallons, and the barrel 32 gallons, the said gallon to contain $272\frac{1}{4}$ cubical inches; and that standards of said measures shall be provided and marked with the crown and letters of his majesty's name, and kept in the exchequer of Ireland, in the custody of the lord treasurer, vice treasurer, or his deputy for the time being: and by s. 3. enacts that measures according to said standards shall be provided and marked with the crown and letters of his majesty's name, and such other mark as the treasurer, &c. shall think fit, and shall be kept in every county, town, city, liberty, franchise, and market town, in the custody of the sheriff of said county,

s. 3.

s. 4.

s. 6.

7 W. 3. c. 24.
s. 1. & 2. Ir.*Measures in
Ireland.*

s. 3.

and of the mayor, bailiff, &c. or other chief magistrate resident in every such city, &c. and the fee of the vice treasurer, &c. for marking the same shall be 6*d*. The sheriffs, mayors, &c. are directed to compare with said standards all measures brought to them, and to mark or brand the same, if agreeing with said standards, in the ring or edge, with the crown and letters of his majesty's name, and also with a mark or brand to be appointed by each county, city, &c.; the fee for which duty is thereby also limited to 6*d*: and a penalty of £.50 is by s. 6. imposed on every person having power to measure and mark such barrels, &c. for every barrel, &c. which he shall mark, seal, and allow, &c. if containing more or less than said standards, one moiety to the king, and the other to the person suing for the same in any court of record at Dublin, by action of debt, &c. The penalty for selling any grain by other measures is £.10 (by s. 5.) to poor and informer.

Prerogative of coining.

The prerogative of coining, and of ascertaining the value of the current money of the realm, is of a nature similar to that of the regulation of weights and measures, as concerning also the domestic commerce of the country. The several statutes which will be found in the 6th and 7th chapters of the 4th part of this work, are all in affirmance and support of this prerogative; but more particularly those acts which make various offences relating to the king's money amount to the crime of high treason. The consideration of those statutes is reserved for that place.

§ 7.

The king, supreme head of the church.

26 Hen. 8. c. 1. Eng.

Lastly, the 26 Hen. 8. c. 1. Eng. declares and enacts that the king shall be taken, accepted, and reputed, the only supreme head on earth of the church of England, and shall have and enjoy, annexed and united to the imperial crown of the realm, as well the title and stile thereof, as all honours, dignities, &c. to the said dignity of supreme head of the church belonging, and that the king shall have full power to visit, repress, &c. all errors, heresies, &c. in such manner as shall be most to the pleasure of God, the increase of virtue, and for the conservation of the peace, unity, and tranquillity of the realm: with which statute

28 Hen. 8. c. 5. s. 1. Ir.

the 28 Hen. 8. c. 5. s. 1. Ir. corresponds. The 25 Hen. 8. c. 19. s. 1. Eng. had previously declared that the convo-

cations

cations of the clergy always had been, and ought to be assembled only by the king's writ, and prohibited the clergy from claiming or putting in ure any canons, constitutions, or ordinances, provincial or synodal, as were prejudicial to the king's prerogative, or repugnant to the laws and statutes of the realm, and from making, promulging, or executing, any such canons, &c. in convocation, without the king's assent and licence, upon pain of being imprisoned and fined at the king's will. And this statute contained a temporary clause, empowering the king to nominate 32 persons, 16 whereof were to be of the clergy, and 16 of the temporalty, of the then upper and nether house of parliament, to revise the canons, &c. and to select such as were worthy to be continued, and to abrogate the rest. And by the 28 Hen. 8. c. 13. s. 10. Ir. ^{28 Hen. 8. c. 13. s. 10. Ir.} such canons as were not repugnant to the laws or the king's prerogative, were allowed to be used in Ireland, till otherwise ordered by the king or the parliament.

CHAP. VIII.

Of the King's Revenue.

THE 5th chapter of Magna Charta recognised the right of the king to the custody of vacant archbishopricks, ^{Custody of the temporalties of bishops.} bishopricks, abbeyes, priories, churches, and dignities, ^{9 Hen. 3. c. 5. E. & I.} but provided that such custody should not be sold, and that the temporalties of archbishopricks, &c. should be maintained and preserved free from waste, and restored in like manner as the inheritances of wards by their guardians. The same prohibition against waste was contained in the 3 Edw. 1. c. 21. E. & I. And the 14 Edw. 3. st. 4. ^{3 Edw. 1. c. 21. E. & I.} c. 4. E. & I. enjoined the escheators and other keepers in ^{14 Edw. 3. st. 4. c. 4. E. & I.} such time of vacation, from selling the underwood, hunting in the parks or warrens, fishing in the ponds or free fisheries, or committing any waste in the manors, warrens, parks, ponds, or woods, and from extorting or taking fines

1 Edw. 3. st. 1.
c. 2. E. & I.

14 Edw. 3. st. 4.
c. 4. & 5. E. & I.

1 Edw. 3. st. 2.
c. 10. E. & I.

finer from the tenants of such voidances, or doing any other harm or oppression. And the 1 Edw. 3. st. 1. c. 2 E. & I. recites, that the temporalities of divers bishops had been seized and detained for a long time by king Edward II. to the great damage of the bishops, and to the waste and destruction of their castles, manors, parks, and woods, and provides that it shall not be practised in future. The 14 Edw. 3. st. 4. c. 4. & 5. empowers the chancellor and treasurer to let such vacant archbishopricks, &c. to the dean and chapter, &c. upon security, for such term as to them shall seem best, saving to the king all advowsons, escheats, &c. Next as to corodies, which were pensions or allowances for the benefit of the king's chaplains. The 1 Edw. 3. st. 2. c. 10. E. & I. provides that the king shall not desire of bishops, &c. any pensions, prebends, churches, or corodies, for his clerks or servants, but where he ought. But these branches of the ancient revenue of the crown are now unproductive, as well as that arising from the tithes of extra-parochial places, for the reasons mentioned by Sir William Blackstone.

§ 2.
First fruits and tenths.

26 Hen. 8. c. 3.
Eng.
28 Hen. 8. c. 8.
Ir.

II. The revenue of *first fruits and tenths*, which were some of the papal usurpations and exactions from the clergy of England and Ireland, were of course transferred from the pope to the crown, upon the king's being declared supreme head of the church. The 26 Hen. 8. c. 3. Eng. and 28 Hen. 8. c. 8 Ir. for this purpose provided, that the king should have the first fruits, revenues, and profits for one year of every archbishoprick, bishoprick, &c. or other dignity, benefice, office, or spiritual promotion, whereunto any person should be nominated, elected, presented, collated or appointed, and that every such person before any actual or real possession or meddling with the profits of any such archbishopricks, &c. should pay or compound or agree to pay to the king's use at reasonable days upon good sureties the said first fruits and profits for one year. And these acts provide for the appointment of commissioners, to examine and search for the true value of the said first fruits, and to compound for the same upon getting sufficient sureties by writings obligatory,

obligatory, which when certified into chancery were to have the force and effect of statutes staple. By the 26 Hen. 8. c. 3. s. 5. Eng. the penalty for entering upon any spiritual living before paying or compounding for the first fruits, was the forfeiture of double the value of such first fruits, upon conviction by presentment, verdict, confession, or witness, before the chancellor or such other as should have authority by commission to compound as aforesaid: which clause was also in force in Ireland by virtue of the 28 Hen. 8. c. 8. s. 4. The 26 Hen. 8. c. 3. s. 9. & 10. further provided that the king, as supreme head of the church, should also have for the maintenance of that dignity, one yearly rent or pension amounting to the value of the tenth part of the provisions, rents, tithes, and other profits spiritual and temporal belonging to any archbishoprick, &c. or other benefice or promotion spiritual, within the realm, to be annually payable at christmas, deducting however all head-rents and other annual and perpetual rents and charges payable thereout; and the 28 Hen. 8. c. 14. Ir. contained a similar provision as to the payment of the twentieth part of the profits of all spiritual promotions in Ireland, which was however afterwards released by queen Anne. But by the 27 Hen. 8. c. 8. s. 1. Eng. no tenths were to be paid for the first year, the first fruits being payable in respect to said year. The 1 Eliz. c. 4. Eng. revived and confirmed this right of the crown, (which had been done away by the 2 & 3 Ph. & M. c. 4.) but by s. 29. exempted from the payment of the first fruits all vicarages not exceeding the yearly value of £10. and parsonages not exceeding the yearly value of ten marks, according to the valuation in the records and books of the exchequer. This act (s. 40.) further exempted the revenues of hospitals and schools from the payment of tenths or first fruits. And by the 2 Eliz. c. 3. s. 4. Ir. vicarages not exceeding £6. 13s. 4d. and parsonages not exceeding £5. of yearly value, according to the book of rates in the exchequer, were discharged from first fruits: and by s. 8. hospitals and schools were also exempted. The penalty for default of payment of tenths when demanded according to the provisions of the 26 Hen.

26 Hen. 8. c. 3. s. 5. Eng.

28 Hen. 8. c. 8. s. 4. Ir.

26 Hen. 8. c. 3. s. 9 & 10. Eng.

28 Hen. 8. c. 14. Ir.

27 Hen. 8. c. 8. s. 1. Eng.

1 Eliz. c. 4. Eng.

s. 29.

s. 40.

2 Eliz. c. 3. s. 4. Ir.

s. 8.

2 & 3 Edw. 6.
c. 20 Eng.

2 & 3 Ann. c. 11.
Eng.

s. 2.

s. 4. & 5.

5 Ann. c. 24.
Eng.

Hen. 8. c. 3. Eng. was by the 2 & 3 Edw. 6. c. 20. Eng. the forfeiture of the benefice out of which the same was due. The 2 & 3 Ann. c. 11. Eng. recites the 26 Hen. 8. c. 3. and that divers other statutes had been made touching the first fruits and annual tenths of the clergy, but that inasmuch as a sufficient settled provision for the clergy in many parts of the realm had not been made, by reason whereof divers mean and stipendiary preachers were in many places entertained to serve the cures and to officiate there, who depending for their necessary maintenance upon the good will and liking of their hearers, were under temptation of too much complying and conforming their doctrines and teaching to the humours, rather than the good of their hearers, which had been a great occasion of faction and schism and contempt of the ministry; and that it was her majesty's royal pleasure and pious desire, that the whole revenue arising from first fruits and tenths should be settled for a perpetual augmentation of the maintenance of the clergy, in places where they were not sufficiently provided for; and this act accordingly authorizes the queen to erect a corporation, and to settle on them and their successors the first fruits and tenths, for augmentation of the maintenance of such parsons, vicars, curates, and ministers officiating in any church or chapel in England, &c. where the liturgy, &c. of the church of England shall be used, in such manner as she should by her letters patent appoint: and all statutes relating to first fruits and tenths are by s. 2. declared to be in force for such purposes as should be contained in said letters patent: and by s. 4. & 5. all persons, except persons within age or of non-sane memory, or women covert without their husbands, are empowered to grant to said corporation, by deed inrolled according to the 27 Hen. 8. c. 16. Eng. or by their last will duly executed, any lands, &c. for the purposes aforesaid; and said corporation may purchase, or receive and take, such lands, &c. without any licence or writ of *ad quod damnum*, and notwithstanding the statute of *mortmain* or any other statute or law to the contrary. The 5 Ann. c. 24. Eng. recites that certain persons and officers were accordingly incorporated by the name of "The bounty

bounty of queen Anne, for the augmentation of the ^{Corporation of} maintenance of the poor clergy;" and the revenue of ^{the bounty of} the first fruits and tenths vested in said governors by her letters patent, dated 3d November, in the 3d year of her reign; and by this act all ecclesiastical benefices with cure of souls, not exceeding the yearly value of £50. by the improved valuations of the same, (the tenths whereof were by the said charter vested in said corporation,) are for ever discharged from the first fruits and tenths. This act was further enforced by the 6 Ann. c. 27. ^{6 Ann. c. 27.} Eng. and 1 Geo. 1. st. 2. c. 10. Eng. which latter act requires ^{Eng.} the bishops of every diocese and the guardians of the spiri- ^{1 Geo. 1. st. 2.} tualties *sede vacante* to inform themselves from time to time by the oaths of 2 witnesses and by all other ways and means, of the clear improved yearly value of every benefice with cure of souls, and of the clear improved yearly value of the maintenance of every parson, vicar, curate, and minister officiating in any such churches or chapels within their respective dioceses, or within any peculiars or places of exempt jurisdiction, and how such yearly values arise, and to certify the same under their hands and seals to the governors of the bounty of queen Anne, &c. This act also provides (s. 4.) for the benefit of ministers ^{s. 4.} who come in by donation, and of such as are only to be paid as private preachers, that all churches, curacies, or chapels which shall at any time be augmented by the governors of the bounty of queen Anne, shall be perpetual cures and benefices, and the ministers duly nominated thereunto and their successors become bodies corporate and capable to take all such lands, &c. as shall be granted unto them by the said governors or others; and the impropriators or patrons of any such augmented churches or donations, and the rectors and vicars of the mother churches, are thereby declared to be excluded from the benefit of any such augmentation. The 3 Geo. 1. c. 10. Eng. ex- ^{3 Geo. 1. c. 10.} empts archbishops and bishops from collecting the tenths ^{Eng.} (which they were required to do by the 26 Hen. 8. c. 3.) and provides that there shall be one collector or receiver to be appointed by the letters patent of the king, who shall receive and pay the same into the exchequer, and if any archbishop, &c. chargeable with tenths,

tenths, shall not duly tender the same before the last of April, on certificate thereof by the collector, the process of the exchequer shall issue against such archbishop, &c.

2 Geo. 1. c. 15. Ir. The 2 Geo. 1. c. 15. Ir. recites the letters patent of queen Anne, dated 7th February in the 10th year of her reign, granting to trustees therein named the first fruits of ecclesiastical benefices; as also other letters patent of the same date, releasing to the clergy of Ireland and their successors the twentieth parts; and this act confirms the said exemption to the clergy from payment of the twentieth parts and the other clauses and matters contained in said letters patent, and declares that the said trustees and their successors shall receive the first fruits, subject to the uses expressed and limited in said letters patent, discharged of all right of the crown. But by s. 2. any 7 or more of the trustees, (of whom the lord chancellor, lord keeper or first commissioner of the great seal, and 1 archbishop and 2 bishops shall always be 4) are authorized to act in the said trust, though by the letters patent 9 were required. And by the 10 Geo. 1. c. 7. s. 3. Ir. in the absence of the chancellor, lord keeper, or first commissioner of the great seal, any chief judge of K.B. C.B. or Exch. and in the absence of the chief judges the prime serjeant, attorney-general, or solicitor-general, may be of the *quorum*. By the 2 Geo. 1. c. 15. s. 3. Ir. all bishops, dignitaries, and other clergy shall have 4 years allowed them for the payment of first fruits, giving writings obligatory for payment of the same in 2 years as was before usual, which 4 years are to commence, for archbishops and bishops from the restitution of their temporalities, and for all other ecclesiastical persons from the date of their titles to their benefices; in each of which 4 years the fourth part of the whole sum for first fruits shall be paid; and in case of death or removal before the expiration of the 4 years, the heirs, executors, or administrators of such archbishop, &c. shall be discharged of so much as did not become due at the time of such death or removal.

10 Geo. 1. c. 7. s. 2. Ir. By the 10 Geo. 1. c. 7. s. 2. Ir. the trustees are incorporated, by the name of "The Trustees and Commissioners of the first fruits payable out of the ecclesiastical benefices." The 29 Geo. 2. c. 18. Ir. recites that the trustees

Board of first fruits in Ireland.

s. 2.

10 Geo. 1. c. 7. s. 3. Ir.

2 Geo. 1. c. 15. s. 3. Ir.

Time allowed for payment of first fruits.

10 Geo. 1. c. 7. s. 2. Ir.

Trustees incorporated.

29 Geo. 2. c. 18. Ir.

trustees were empowered to purchase glebes and impropriations for the augmentation of the maintenance of the poor clergy, whose benefices did not afford a competent support to the minister having the cure of souls, and further recites that the revenue arising from first fruits was computed to amount to the sum of £300. a year or under, and that as proper and convenient purchases of glebes and impropriations could seldom be found where they are most wanting, to make therefore this small revenue productive while unemployed, this statute empowers any 7 or more of the trustees to lay out at interest, all or any part of the said produce of said revenue, as shall from time to time remain unemployed, in government securities in Great Britain or Ireland, or in mortgages of lands, &c. in Ireland, as shall be directed by the said trustees or the *quorum* of them, and to change such securities from time to time, and to call in or transfer the same if wanted to purchase glebes or impropriations. And this act also contains provisions for carrying into effect, the bountiful disposition made by archbishop Boulter's will, by which a property amounting to £30,000. or upwards was bequeathed for augmentation of the poor livings in Ireland: and this act contains (s. 6.) clauses similar to those of the 1 Geo. 1. st. 2. c. 10. Eng. *ante* page 169, requiring the several archbishops and bishops to inform themselves of the clear improved yearly value of every benefice with cure of souls, or curacy appropriate or impropriate, which shall be commonly reputed to be under £60. by the year, and to certify the same to the trustees of first fruits; and also provides (s. 7.) for paying annual salaries to the incumbent of such benefices, or such parsons, vicars, curates, or ministers, as that the value certified, with the augmentation, shall not exceed £60. a year, till convenient purchases of glebes or tithes or both shall be made for the purpose of such augmentation. And for the better enforcing the payment of first fruits, the 29 Geo. 3. c. 26. Ir. enacts that any person promoted to any benefice or ecclesiastical preferment chargeable with the payment of first fruits, shall previous to his institution or collation deliver to the person from whom

Their power and duty.

Archbishop Boulter's will.

s. 6.

s. 7.

29 Geo. 3. c. 26. Ir.

Constat from first fruits office to be produced of bond being passed.

whom he shall receive such institution, &c. a *constat* from and signed by the clerk of the first fruits in the exchequer, certifying that upon search made in the first fruits office, it appeareth that such person hath by himself or some other surety or co-obligor compounded for and executed bonds in the usual manner for the payment of the first fruits, which *constat* shall also specify the principal sum secured by such bonds respectively; for which *constat* the clerk shall receive 6*d.* above the other usual fees; and if no such *constat* shall be produced, the ordinary or other person giving such institution, &c. shall previous to such institution, &c. take the bond of the person applying for institution, &c. payable to the archbishop or bishop and his successors of the diocese in which such benefice, &c. lies, in the penalty of £30. conditioned that the obligor, his heirs, executors, or administrators shall, before he receives induction or the actual possession of such benefice, &c. compound with the clerk of the first fruits, by entering into the usual bonds and pay to such clerk the sums which shall be due on such bonds: but if such *constat* shall be produced previous to institution, &c. then the person who is to give the same shall previous thereto take a bond to the archbishop, &c. from the person so to be instituted, &c. conditioned for the payment to the clerk of the first fruits, of such sum as shall be due on such composition-bond or bonds. And by s. 2, every such bond may be put in suit in the name of the successors of such archbishop, &c. and the archbishops, &c. when they make returns of promotions in the respective dioceses, are required to specify the several bonds so taken by them, and to transmit such bonds to the clerk of the first fruits, who may accordingly put the same in suit at the expense of the trustees and commissioners of first fruits, and for their benefit, in the name of the archbishops, &c. and their successors. By s. 5. all archbishops and bishops are required, whether writs be served on them or not, on the 1st day of Michaelmas Term and Easter Term in every year, or in 31 days after at the farthest, to make returns to the clerk of the first fruits, of all how many and what deans

s. 2.

Bond put in suit

s. 5.

*Return of deans
&c. admitted,
&c. and of number of bonds
passed.*

deans, archdeacons, provosts, prebendaries, rectors, and vicars, or others, have been admitted, instituted, collated, or inducted to dignities, benefices, offices, or promotions spiritual, and by what names and surnames they were so admitted, &c. together with the day and year of the institution or collation of each of them, and in what county, or counties within their dioceses or jurisdictions such deaneries, &c. are situate, to the dates of such returns; and they are also required to make returns of such bonds by them taken as aforesaid, and to transmit to the dates of such returns, all such bonds to the clerk, &c. This act also provides (s. 3.) that any sheriff or sub-sheriff who shall neglect or refuse to make due return into the first fruits office, of every process or execution which shall have been issued and delivered, within 21 days after the return day thereof, or who shall withhold or neglect or refuse to pay over to the clerk, &c. any money levied by such sheriff under such process, &c. for the space of one calendar month after the return day, shall be ordered by the court of exchequer, unless reasonable cause be shewn to the contrary, to pay over to such clerk, &c. the full amount of the money mentioned in the process or schedule thereto, together with £10. *per cent.* interest, and treble costs out of pocket; and by s. 4. a *quietus* obtained out of said court, shall be no bar to the clerk, &c. suing such sheriff in such court, unless a *constat* shall be produced to the court from said clerk, of no charge in his office against such sheriff. But this act is declared (s. 6.) not to extend to impeach, &c. any former ways or means by law established, for recovering and enforcing the due composition and payment of first fruits. I shall close this subject by observing that the building of churches and glebe-houses are also objects to which the funds in the hands of the board of first fruits have been made applicable by several statutes, and that considerable grants have been from time to time made to the trustees of first fruits by the parliament of Ireland for those purposes; and the sum of £50,000. has been also granted by the imperial parliament, the application of which is directed and regulated by the 43 Geo. 3. c. 158. I.— 47 Geo. 3. st. 2. c. 23. I. and 48 Geo. 3. c. 65. I.

s. 3.

*Penalty for not making returns.**Penalty for sheriff's not paying over money levied.*

s. 4.

s. 6.

*First fruits applicable to building churches and glebe-houses.**Grant of £50,000. 43 Geo. 3. c. 158.**I. 47 Geo. 3. st. 2. c. 23. I.**48 Geo. 3. c. 65.*

Another I.

§ 3.

Fees upon faculties and dispensations.

25 Hen. 8. c. 21.
28 Hen. 8. c. 19.

III. Another branch of revenue of an ecclesiastical kind seems to be the *fees upon faculties and dispensations* in pursuance of the 25 Hen. 8. c. 21. Eng. and 28 Hen. 8. c. 19. Ir. which statutes distribute these ancient fees or taxes between the king, the chancellor and clerk of the chancery, and the archbishop and his commissary clerk and register.

§ 4.

Rents and profits of demesne lands of the crown.

1 Ann. st. 1. c. 7.
s. 5. Eng.

Leases, for what term,

At what rent.

s. 6.

What leases of buildings.

34 Geo. 3. c. 75.
s. 3. Eng.

IV. With respect to the revenue arising from the *rents and profits of the demesne lands of the crown*, the 1 Ann. st. 1. c. 7. s. 5. Eng. enacted, for the preserving of those revenues, that every lease or other assurance which shall be made under the great seal, exchequer-seal, seal of the duchy of Lancaster, or by copy of court roll, of any manors, lands, &c. (advowsons of churches and vicarages only excepted) within England, &c. belonging to the crown, to any person or body corporate shall be void, unless made for some term or estate not exceeding 31 years or 3 lives, or for some term of years determinable upon 1, 2, or 3 lives, and unless such grant, &c. shall be made to commence from the date or making thereof; and if such grant, &c. be made to take effect in reversion, then the same with the estate in possession shall not exceed 3 lives or 31 years in the whole; and the tenant shall thereby be liable to punishment for waste; and upon every such grant, &c. the ancient or most usual rent or more shall be reserved, which hath been reserved or yielded for the said manors, &c. for the greater part of 20 years before the making thereof; or where there had been no such rent reserved, then a reasonable rent not being under the 3d part of the clear yearly value thereof; and such rent shall be reserved to the crown for the whole term so granted thereof: but by s. 6. where the greatest part of the yearly value of any tenements or hereditaments belonging to the crown, shall at the time of making any grant, &c. consist of buildings which may want to be repaired or re-edified, in such case the crown was empowered to demise the same for any term not exceeding 50 years or 3 lives; but such grant, &c. to be in other respects (except as to the term) as provided by the former section. And the 34 Geo. 3. c. 75. s. 3. Eng. empowered the crown, under the direction of the lord high treasurer

treasurer or commissioners of the treasury, to grant land ^{*Leases of land for building,*} for building for 99 years or 3 lives, or if in reversion not to exceed that term together with the subsisting term, where the lessees should agree to make erections of greater value than the lands; and also to grant such leases, where the greatest part of the yearly value of the pre- ^{*Or of buildings.*} mises should consist of buildings thereon: and this act provides (s. 5.) that it shall not be lawful to renew any ^{s. 5.} lease or grant of any messuages, lands, &c. belonging to the crown for any term of years, until within 5 years of the expiration of the same, except such tenements, &c. as are hereby authorized to be granted for any term not exceeding 99 years, the leases whereof shall not be renewed until within 20 years of the expiration of the same; nor to renew any lease or grant for lives, while any life shall be in being: but to this restriction there are certain exceptions by s. 6. & 7: and this act (s. 19.) also <sup>s. 6 & 7.
s 19.</sup> enables the king to accept surrenders of any subsisting leases, and to make new leases of the subdivisions of the premises so surrendered. By s. 3. & 4. such rents ^{s. 3. & 4.} shall be reserved upon all such leases, as shall appear to the lord high treasurer, &c. to be reasonable. And the ^{*Leases of lands, &c. surrendered*} 48 Geo. 3. c. 73. E. authorizes leasing lands for gardens, <sup>48 Geo. 3. c. 73.
E.</sup> to be used with houses built on the crown land, for any term not exceeding 99 years, so as not to exceed the ^{*Leases of lands for gardens.*} term for which the houses or buildings to which the same shall be attached shall be holden: But this act (s. 3.) pro- ^{s. 3.} vides that in future no lease for any life or lives shall be granted of any land or ground belonging to the crown, ^{*No freehold lease to be executed.*} with an exception only as to certain lands in the county of Huntingdon. The 26 Geo. 3. c. 87. Eng. which ap- <sup>26 Geo. 3. c. 87.
Eng.</sup> pointed commissioners to inquire into the state and condition of the woods, forests and land revenues of the crown, also provided for the sale or alienation of the fee- ^{*Sale of land revenues of the crown.*} farm and unimproveable rents and chief rents belonging to the king, which was also the object of the 22 Car. 2. <sup>22 Car. 2. c. 6.
Eng.
22 & 23 Car. 2. c. 24. Eng.
30 Geo. 3. c. 50.
& 34 Geo. 3. c. 75. Eng.</sup> c. 6. Eng. and 22 & 23 Car. 2. c. 24. Eng. The 26 Geo. 3. c. 87, has been continued and amended by the 30 Geo. 3. c. 50. and 34 Geo. 3. c. 75. Eng.

The following deduction of the land revenue of the crown in Ireland, though in some measure a deviation from

from the original plan of this work, may not perhaps be uninteresting.—The *Crown Rents of Ireland* principally arise out of grants made of the lands, &c. belonging to the monasteries, abbies, priories, and other religious houses, which in the reign of king Henry VIII. were dissolved, suppressed, or surrendered to his majesty, and which were vested in the crown by the 28 Hen. 8. c. 16.

**Vide Howard's Revenue, v. 1.*

p. 31.

Carte's Ormond

p. 13. to 18.

Ir. and 33 Hen. 8. st. 2. c. 5. Ir. * and certain crown rents were also reserved upon the grants of the 6 counties in the province of Ulster, which were forfeited to the crown by the rebellion of the earl of Tyrone and others, and which were planted by king James I. and allotted to the old chieftains and inhabitants, and to the servitors of the crown (who were the great officers of state and officers in the army) and assigned also to English and Scotch undertakers.

Port corn rents.

How. Rev. v. 1.

p. 33. to 38. &

v. 2. p. 270. to

279.

The *port corn rents* were a kind of rent, or render of corn or other produce of the land, formerly paid by many of the tenants of the monasteries and abbies before their dissolution, and afterwards reserved upon grants made by the crown, of the possessions of those religious houses, and especially of the rectories and tithes thereunto belonging: but these port corn rents were shortly after the dissolution of the abbies, &c. given by the crown to the lord lieutenant, and to certain other great officers in Ireland, to wit the master of the rolls, the lord chief justice, and the lord chief baron, and the president of Munster and Connaught, and are saved and confirmed to them

14 & 15 Car. 2.

c. 2. s. 108. 11.

by the Act of Settlement (14 & 15 Car. 2. c. 2. s. 108. Ir.) These port corn rents, which were anciently rendered at the principal town in the county named in the patent, have been since the year 1763 paid to the commissioners of the revenue, according to a rent-roll made thereof in the reign of queen Elizabeth, which also ascertained a *modus* or sum of money in lieu of the port corn which was a payment in kind.

Composition rents.

How. Rev. v. 1.

p. 38. to 43.

Next, as to *composition rents*. Part of these were reserved upon a composition made in the reign of queen Elizabeth, the lords and chieftains of the provinces of Connaught and Munster and other parts of Ireland having

having petitioned her majesty, to accept from them the surrender of all their lordships, manors, lands, &c. to the end that she might regrant their estates, to hold of the crown, by such tenures, rents, and services, as should be thought meet, in respect to such quantity and quality of the said lands, &c.; whereby they were to become relieved from all cesses, exactions, cuttings, impositions, purveyings, catings, finding or bearing of soldiers, and other burdens incident to the Irish tenure. And accordingly the statute 12 Eliz. st. 1. c. 4. Ir. was passed to enable the queen to make grants of the lands which should be so surrendered, to be holden of the crown for such estate, and by such tenure, and subject to such rents and services, as should be expressed and reserved in said letters patent. And in pursuance of this act, a commission was afterwards issued in the 27th year of this reign, and indentures of composition were executed on behalf of the queen, and of the chieftains, gentlemen, freeholders and inhabitants of Connaught and Thomond. To rectify the errors and to remove the doubts concerning this composition, and to remedy the defects in the several titles derived under it, a further commission of grace was issued in the reign of James I.;* and several surrenders were made, and letters patent granted in pursuance of this king's letter. But it was not until the reign of Charles I. that these compositions were finally concluded and made effectual, several claims of right having been set up* in this reign, on behalf of the king, by the earl of Strafford as his minister, to large tracts of ground in Ireland, and various new patents being accordingly granted to the former proprietors; and these patents were confirmed by the 10 Car. 1. st. 1. c. 3. Ir. 10 Car. 1. st. 3. c. 2. & 3. Ir. and 15. Car. 1. c. 6. Ir. This minister caused the survey to be made of these English plantations, and the nature and quality of the lands described, and the names of the proprietors or reputed proprietors returned, which is since known by the name of Strafford's survey. These composition rents are accordingly in charge in the king's rent rolls,* to wit, for every quarter part of a town-land, 10s. and for every cartron, 2s. 6d.

12 Eliz. st. 1.
c. 4. Ir.

* Carte's Ormond, vol. 1.
p. 26.
Sir J. Davies' Tracts, p. 205.

* Leland's Hist. vol. 3. p. 31.

10 Car. 1. st. 1.
c. 3. Ir.
10 Car. 1. st. 3.
c. 2 & 3. Ir.
15 Car. 1. c. 6.
Ir.

Strafford's Survey.

* Howard's Rev. vol. 1. p. 42.
vol. 2. p. 112.

§ 5.

*Quit rents.*16 Car. 1. c. 34.
Eng.

V. I shall next proceed to a deduction of the history of *quit rents*, which is a branch of the Irish revenue that first arose, out of the estates which were forfeited, by the rebellion which broke out in Ireland, on the 23d October, 1641, during the civil war in England between King Charles I. and his parliament. These forfeitures were so considerable that the interposition of the English parliament was judged necessary, and accordingly by the 16 Car. 1. c. 34. Eng.* it was enacted that all such rights, titles, interests, &c. as the rebels had on the 23d October, 1641, or should afterwards have in any lands, or other hereditaments, should be forfeited to the king, and be deemed in the actual possession of the crown without any office or inquisition thereof to be found; and for reducing the rebels and distributing their lands amongst such as should advance money, two millions and a half of acres exclusive of waste lands, were assigned and allotted in the several provinces of Ireland, amongst the adventurers, in proportion to the sums advanced by them. Out of these acres so allotted and distributed, a yearly quit-rent was reserved to the crown, viz. 1*d.* for each acre of English measure in Ulster; 1½*d.* in Connaught; 2½*d.* in Munster; and 3*d.* in Leinster; and by the said act a commission was to issue to survey all the lands of the rebels that should be forfeited; and these lands were to be divided amongst the adventurers by equal lot, by the commissioners appointed under the great seal, and each allotment was to be returned into chancery; and every adventurer by such allotment was to be in actual seisin of his share. And by this act every person, within 3 months after allotment, that should have 1000 acres in Leinster, 1500 acres in Munster, 2000 in Connaught, or 3000 in Ulster, was to have power to erect a manor, with a court baron and a court leet, and all other privileges belonging to a manor, and with deodands, fugitive goods, &c. A survey† appears to have been made about this time for the purpose of ascertaining who the proprietors and forfeiting persons respectively were, which as being taken by the direction of the civil powers was called

†Howard's Rev.
vol. 2. p. 115.*Civil or Estimate Survey.*

* The 16 Car. 1. c. 30, 33, 35, & 37. Eng. were also passed for reducing the Irish rebels.

called the Civil Survey, and was also called an Estimate Survey, as having been taken by inquisition on the reputation of the country, and not laid down by chain and scale. But in the year 1652, the rebellion being then suppressed, the English parliament published an ordinance called, An Ordinance for the settling of Ireland, *Ordinance for the settling of Ireland.* by which certain classes of offenders against the commonwealth and the parliament were declared to forfeit the whole of their estates—others two-thirds—another class one-third—and the fourth class in this scale of offenders forfeited one-fifth of their estates. And by an ordinance made in the following year, the forfeited lands in certain counties were to be charged with the sums due to the adventurers and soldiers according to the rates ascertained by the 16 Car. 1. c. 34. and to be divided between them by baronies moiety by lot; and other parts and proportions of the forfeited lands were to be allotted for the satisfaction of the arrears of the forces who were to be immediately disbanded. Pursuant to this ordinance, commissioners were appointed for putting it in execution, and for taking a survey of the forfeited lands, and for appointing a court for receiving and hearing claims. And it was an instruction to these commissioners, that the second and third classes of the forfeiting persons, should be transplanted into the province of Connaught and county of Clare. And in pursuance also of this ordinance Doctor Petty (afterwards Sir Wm. Petty, a learned mathematician) appears to have made a survey of the kingdom,* which was called the Down Survey, being *Down Survey.* laid down by chain and scale, to distinguish it from the estimate or civil survey above-mentioned; and commissioners accordingly proceeded to sit and act in execution of this ordinance and of the instructions received by them, and to determine upon the claims preferred before them; and upon their decrees the transplantations were set out by other commissioners. But many claims remained undetermined, and the transplantation was not completed at the restoration of Charles II.; and accordingly on the 30th November 1660, this king signed his declaration *Declaration for the settlement of Ireland.* for the settlement of Ireland, by which he confirmed to the adventurers and soldiers all the lands allotted to them

or in their possession on the 7th May 1659, excepting church-lands, and with certain other exceptions; and such of the officers who had served before 5th June, 1649, whose arrears were yet unsatisfied, were to receive a satisfaction out of the forfeited lands, in certain counties, and out of the houses and tenements in walled and corporate towns. Those protestants whose estates had been given to adventurers and soldiers (except such as had been in rebellion before the cessation of arms in September, 1643, or had taken out decrees for lands in Connaught or Clare in recompence of their former estates) were to be forthwith restored and the others reprised; and innocent papists also, who had been dispossessed, (although they had obtained decrees of innocence and were possessed of lands in Connaught and Clare) were to be restored to their former estates; and the adventurers and soldiers removed to make room for such papists, were to be forthwith reprised; and every adventurer and soldier so settled, and every person so restored or reprised was by this declaration to pay to the king 3*d.* by the acre in Leinster, 2½*d.* in Munster, 1½*d.* in Connaught, and 1*d.* in Ulster, according to the English measure; and out of houses in corporations, 1*s.* 6*d.* out of every 20*s.* of rent. And accordingly by a commission under the great seal of Ireland bearing date 30th April in the 13th year of his reign, his majesty appointed commissioners for putting into execution the several matters contained in his said declaration. But this declaration, though intended to provide for all interests, did not satisfy all parties,* and being only an act of state was not therefore considered of sufficient authority for disposing of men's properties; the proceedings of the commissioners for executing it were consequently ineffectual. To remove some objections to the king's declaration and to carry it into legal execution, the Act of Settlement 14 & 15 Car. 2. c. 2. Ir. was therefore passed, by which all lands, &c. which from the 23d Oct. 1641, had been seized and sequestered into the hands of or to the use of king Charles I. or king Charles II. or otherwise disposed of or set out to any person or use for adventurers, arrears, reprisals, or otherwise,

*Commission for
executing it.*

*Carte's Or-
mond, vol. 2.
p. 220.

*Act of Settle-
ment.*

14 & 15 Car. 2.
c. 2. Ir.

otherwise, whereof king Charles I. or king Charles II. *Clause vesting estates in the king.* or any adventurer, soldier, reprisable person or other, was in the seisin or possession on the 7th May 1659 by reason of the rebellion or war; or which were set apart towards the satisfaction of any adventurers, soldiers, or others; or reserved for reprisals or otherwise; or whereof any custodiam lease for years or other grant had been made; or unto which the king's father or himself were entitled upon account of the said rebellion or war; or which were then wrongfully detained or concealed; as also all chantries, and all lands, &c. to them belonging which were in the seisin, &c. of any persons who should not be adjudged innocent according to the qualifications of this act; as also all lands, &c. belonging to any ecclesiastical persons, in their politic capacity that had been let in fee farm, or for any other term to persons who should not be adjudged innocent, were declared forfeited to the king as from the 23d October, 1641, and were from that time vested in the crown without any office or inquisition found, notwithstanding the former proprietors were not attainted for the said rebellion or war. But these rights which were so declared to be vested in the crown, were by subsequent parts of the act divested in favour of such persons as since the 23d Oct. 1641, had obtained any conveyance from protestant *Clause divesting these estates out of the king in certain cases.* adventurers, soldiers, or others, of such estates as would otherwise have been confirmed by this act, or from persons transplanted to Connaught or Clare; and this act was also declared not to extend to lands belonging to the College of Dublin, or to the church, or to any corporation; and a number of officers and persons distinguished for their loyalty (therein enumerated) are also excepted; and an exception was thereby also made in favour of all innocent protestants or papists and their heirs, &c. But all persons to whom any lands belonging to such innocent protestant or papists had been assigned were to be first reprised before any others. And this act s. 7. *s. 7.* declared that all estates and interests hereby vested in the king, with such exceptions as aforesaid, should remain in the king, to be settled, confirmed, restored, or disposed of to

- to such uses and in such manner as by the king's declaration and instructions aforesaid, (which are herein incorporated) were limited and appointed. By s. 102. provision was made for restoring ecclesiastical persons to such church property as they were in possession of in the year 1641, and of which they were unlawfully dispossessed through the fury of the times; and as to the leases by ecclesiastics, which were by s. 1. declared to be forfeited and vested in the king, they were by s. 103. confirmed to the respective sees or bodies politic to whom they belonged, except so far as they had been made a security for the arrears of the officers who had served before the year 1649; and the lands let by ecclesiastics to fee farm, which were also declared to be forfeited, were by s. 104. to be allotted by way of augmentation to several archbishopricks and bishopricks therein named, and a part thereof to the provost of Trinity College, Dublin, and his successors. And by s. 107. the impropriations or appropriated tithes forfeited or vested in the king by this act, are thereby given to the church for ever, and settled upon the incumbents having cure of souls in those parishes where such impropriations were, reserving such portion thereof to be settled upon the vicars and choirmen of each cathedral church for the increase of their maintenance, as the lord lieutenant and council should think fit; such incumbents however paying the accustomed rent and duties thereout to the crown, or such increased rents as the lord lieutenant, &c. should think reasonable. And a power was also reserved by s. 109. to the lord lieutenant, of making reasonable recompence out of said impropriations, to those to whom they would have been restored, if no such annexation to the church had been made: In order to provide for the erecting of churches, and for the maintenance of ministers, it was enacted by s. 110 that out of every 100 acres of forfeited land not then actually disposed of, 2 acres should be set apart for glebe, in every parish, barony, and county as should be most contiguous to the several parish churches; and that out of such as were before distributed, and confirmed by this act, the respective possessors

possessors should pay so much money, as should be sufficient to purchase said number of acres, within the parish, of the same quality as the lands out of which the said acres would otherwise have been taken; but that out of said glebes the same rent should be reserved as the forfeited lands out of which they were to be taken were to be subject to by this act. By s. 111. the forfeited chantries which were set out to officers serving before 1649, were made liable to the rent formerly paid to the church, or 2s. per pound of the improved value at the election of the bishop, which was to be in lieu of all crown rents thereout. All lands which belonged to any hospital, alms-house, or other charitable use were by s. 177. to be restored and settled under the inspection and regulation of the lord lieutenant and council: and by s. 210. the lord lieutenant and council were empowered out of the lands vested in his majesty to settle a yearly allowance for ever, not exceeding £1000. per annum, for the erecting and endowing of hospitals and work-houses, for soldiers maimed or wounded in the service of Ireland, or in deficiency of such persons, towards other public and pious uses. This act was by s. 204. declared not to extend to Trinity College, Dublin, but that said lands and all derivative interests which were forfeited by the late rebellion should be confirmed to said college, subject however to such rents as adventurers were to pay within the provinces where such lands lie: and by s. 219. the lord lieutenant and council were empowered to erect another college, or member of the university of Dublin, and to endow it with a yearly allowance for ever not exceeding £2000. *per annum*, to be raised by an equal charge on every 1000 acres, or lesser quantities proportionably to the lands, &c. vested by this act in his majesty. By s. 187. all lands, &c. which were confirmed by this act, were declared to be chargeable with such quit rents and annual payments, wherewith the lands of adventurers or soldiers then stood respectively charged. But this act of settlement having also failed of giving satisfaction to all parties interested, and several propositions having been made on the part of the Roman catho-
lics

s. 111.

s. 177.

s. 210.

s. 204.

s. 219.

s. 187.

* Carte's Or-
mond, vol. 2.
p. 304.

17 & 18 Car. 2.
c. 2. Ir.

Act of explana-
tion.

Quit rent in Ul-
ster increased.

s. 27.

Forfeitures in
1691,
11 & 12 W. 3.
c. 2. s. 1. Eng.

Vested in trus-
tees.

lics on the one side, and of the soldiers and adventurers on the other, a settlement was however at last effected by the common consent* of all the several interests concerned; and the English council on the 18th May, 1665, ordered, that the adventurers and soldiers should have two-thirds only of the lands whereof they stood possessed on the 7th May, 1659; that the Connaught purchasers should have two-thirds of what was in their possession in September, 1663; that what any person wanted of his two-thirds should be supplied, and whatever he had more should be retrenched, and that the officers who had served under king Charles I. from the beginning of the rebellion, to the time of his execution and the arrival of Cromwell in Ireland, in 1649, should be established in their present pos- sessions. And accordingly the 17 & 18 Car. 2. c. 2. Ir. was passed which in substance pursued these resolutions, and amongst other things provided that all lands vested in the king, or restored by virtue of any decrees, or by virtue of any clause in this or the former act, and not expressly excepted from quit rents, should be subject to such quit rents as were reserved by the former acts; save only that the lands in the province of Ulster, which by the former act were charged with 1*d.* should be thenceforth charged with 2*d.* by the acre for quit rent. By this act (s. 27.) provision was also made for increasing the glebes of parochial churches from 2 acres, to which they were limited by the act of settlement, to 10 acres, except where they were already endowed with that quantity of land, and except also within great cities and walled towns.

In deducing the history of the revenue arising from quit rents, I have been necessarily led to give a short sketch of the principal provisions of the Act of Settlement and Act of Explanation: and it seems to be also proper in this place to refer to the 11 & 12 W. 3. c. 2. s. 1. Eng. as connected with the history of the Irish revenue and of the settlement of property in Ireland. This act was passed in consequence of the rebellion which broke out in Ireland in favour of king James II. encouraged and assisted by the French king, the forfeitures incurred thereby

thereby having exceeded one million of acres; a great part of which estates were however restored to the old proprietors by the articles of Limerick and Galway, and a considerable proportion also restored by royal favour. By this act all lands, &c. in Ireland, whereof any person who stood convicted or attainted of high treason or rebellion in Ireland, or of other treason committed in foreign parts since the 13th February 1688, or should be convicted before the end of Trinity Term 1701, or who stood convicted or attainted by reason of being found by inquisition to have died or been slain in actual rebellion since the 13th February, 1688, was seised or possessed or interested in on the 13th February, 1688, or at any time after, or whereof king James II. or any in trust for him, was seised, &c. at his accession to the crown, were vested and settled in certain trustees therein named and their heirs, &c. in trust to be sold and disposed of to the uses mentioned in the act; with a saving, (by s. 5.) for persons comprised within the articles of Limerick and Galway: and by s. 2. all grants, alienations and dispositions since the 13th February 1688, made or granted under the great seal of England and Ireland, or seal of the exchequer in Ireland, or by act of parliament in Ireland, or otherwise, of any of the said forfeited or forfeitable estates, or of the estate of the late king James, or of any of the quit rents, crown rents, composition rents, or chiefries belonging to the crown of Ireland, were declared null and void; and all persons and bodies corporate having any estate or interest, charge or incumbrance, in or to said lands before the 13th February, 1688, were required, before the 10th August, 1700, (which time was enlarged by the 12 & 13 W. 3. c. 10. Eng. to the 25th March, 1702) to enter their claims and demands thereto before the trustees, or otherwise to be barred, and the said estates discharged therefrom; and the trustees were to hear such claims before the 25th March 1701, and were made a court of record for that purpose; and their certificate of the allowance of such claims final; and after the expiration of the time for making such claims the trustees were thereby directed
before

s. 5.

s. 2.

s. 25.

1 Ann. st. 2. c. 21.
Eng.*Estates vested in
the crown sub-
ject to the dispo-
sition of English
parliament.*21 & 22 Geo. 3.
c. 48. Ir.33 Geo. 3. c. 49.
Ir.*Transferred to
Irish parliament*

before the 25th March, 1702, (which was afterwards enlarged to the 24th June, 1703 by the 1 Ann. c. 13. Eng.) to sell the estates, &c. vested in them, by cant or auction, as soon as the claims, if any, should be determined: and by s. 25. the purchasers were, upon inrolling their conveyances within 6 months after the date thereof, to be seised of the premises and possessions delivered to them by the sheriffs of the several counties, upon the precepts of the trustees, and to hold the same subject to such quit rents, crown rents, and chief rents as the same were liable to on the 13th February, 1688; and which quit rents, &c. it was thereby enacted should for ever remain for the support and maintenance of the government of Ireland, and be unalienable. And by the 1 Ann. st. 2. c. 21. Eng. all estates vested in said trustees to be sold, and which were not sold before the 24th June 1703, or otherwise disposed of pursuant to said former acts, were vested in the crown for the uses intended by said act, subject to such orders as should be given by the parliament of England in that behalf; and from that day all the powers given to the trustees were to cease, and the trustees were to deliver up to the commissioners of the revenue, by indenture to be inrolled in the exchequer, all deeds, records, and papers in their custody touching the premises, and after that day the commissioners were to levy and collect all the rents and profits of the said forfeited estates, and to pay the money arising thereby after all charges into the exchequer, there to be kept apart from all other the king's treasure, to be applied to the uses aforesaid, according to the orders of the parliament of England. The several English statutes above referred to were adopted and recognised in Ireland by the 21 & 22 Geo. 3. c. 48. Ir. which enacted that all statutes theretofore made in England, for the settling and assuring the forfeited estates in Ireland, should be accepted and executed in Ireland. The 33 Geo. 3. c. 49. Ir. recites the 11 & 12 W. 3. c. 2. Eng. and 1 Ann. st. 2. c. 21. Eng. and that a very considerable part of the estates vested in the trustees had been sold, but that some part remained still unsold, and further recites the

21 & 22 Geo. 3. c. 48 Ir. as also the 33 Geo. 3. c. 46. Eng. 33 Geo. 3. c. 49. Eng.
 (by which latter statute such parts of the forfeited estates
 in Ireland as remained undisposed of, were vested in the *Forfeited estates
vested in the
crown absolutely*
 crown subject to the order and disposition of the parlia-
 ment of Ireland) and enacts that all lands, &c. in Ireland
 which stood so vested in the crown and remaining unsold
 and undisposed of, should be vested in his majesty, his
 heirs and successors to his and their own use, discharged
 from the order and disposition of the parliament of Ire-
 land: but it is provided (s. 2.) that this act shall not avoid *s. 2.*
 or defeat any lease of said lands or any part thereof. It
 is proper also in this place to refer to the 2 Ann. c. 8. Ir. 2 Ann. c. 8. Ir.
 for quieting possessions, by which the plus acres or lands *Plus acres dis-
posed of*
 undisposed of (the residue whereof were granted by pa-
 tent) were declared to be vested in such persons as were
 on the 1st October, 1702, in possession thereof, and in
 their heirs for ever; subject nevertheless to such quit
 rent, *pro rata*, as was payable out of the other parts of
 such denominations, the amount of which quit rent was
 to be ascertained within 3 years by the chief governor
 and six of the privy council; and their decree, to be en-
 tered and inrolled in the auditor general's office, is thereby
 declared to be final. The 35 Geo. 3. c. 39. Ir. may be 35 Geo. 3. c. 39.
 here also stated, which provides that all grants made of *Ir.*
 any lands, &c. within Ireland by letters patent under the *English patents
confirmed.*
 great seal of England, shall be as valid as if passed
 under the great seal of Ireland. The 38 Geo. 3. c. 72 Ir. 38 Geo. 3. c. 72.
 (as amended by the 39 Geo. 3. c. 33. Ir. 46 Geo. 3. c. 123. I. *Ir.*
 and 47 Geo. 3. c. 16. I.) provides for the sale of the quit *Sale of quit-
rents, &c.*
 rents, crown and other rents, and forfeited lands undis-
 posed of in Ireland.

VI. The profits and advantages arising from *the king's* § 6.
military tenures were abolished in England by the 12 Car. *Profits of mili-
tary tenures.*
 2. c. 24. Eng. as they were in Ireland by the 14 & 15 Car. 12 Car. 2. c. 24.
 2. c. 19. Ir. This English act also abolished the burthen- *Eng.*
 some and oppressive prerogatives of purveyance and pre- 14 & 15 Car. 2.
 emptation; but was not followed in this respect by the 14 c. 19. Ir.
 & 15 Car. 2. c. 19. Ir. The 18 Hen. 6. c. 1. Ir. had 18 Hen. 6. c. 1. Ir.
 however, previously enacted, that there should be no
 purveyor, harbinger, nor avener within Ireland, but that
 the lieutenants, justices, or governors, should agree for
 any

any goods to be taken by their achators, otherwise that it should be lawful to make resistance to such achators.

§ 7.

Profits of the king's forests.

VII. There does not appear to have been any such branch of revenue in Ireland, as the *profits arising from the king's forests*, as there is no trace of any Irish statute respecting forests in Ireland, or imposing fines or amerciaments for offences against the forest laws similar to those in England. Sir John Davies has observed* that in all the records of Ireland he seldom found any mention made of a forest, and never of a park or free warren.

*Sir J. Davies' Tracts, p. 124.

§ 8.

Profits of the courts of justice.

1 Ann. st. 1. c. 7. s. 7. Eng.

VIII. The *profits arising from the king's ordinary courts of justice* form a part of the revenue in both countries; no Irish statute has however protected this revenue from alienation by the crown in like manner as the 1 Ann. st. 1. c. 7. Eng. which provides, (s. 7.) that the fines for writs of covenant and writs of entry payable in the alienation office, and post fines, should amongst other small branches of the king's revenue be unalienable, for any longer term than the life of such king or queen as should make any grant thereof respectively. It may be here observed that the monies arising from forfeited recognizances in Ireland, are directed by the 38 Geo. 3. c. 50. s. 32. Ir. to be paid to the treasurers of the several counties, and to be applied by them in aid of the presentments in the respective baronies, &c. in which they shall be levied.

38 Geo. 3. c. 50. s. 32. Ir.

§ 9.

King's right to royal fish.

17 Edw. 2. st. 1. c. 11. E. & I.

IX. The *king's right to whales and great sturgeons* taken in the sea or elsewhere within the realm, except in places privileged by the king, is declared by the 17 Edw. 2. st. 1. c. 11. E. & I. and is therefore a branch of the casual revenue in both countries.

§ 10.

King's right to wrecks.

17 Edw. 2. st. 1. c. 11. E. & I. 3 Edw. 1. c. 4. E. & I.

X. The statute *de prerogativa regis*, 17 Ed. 2. st. 1. c. 11. E. & I. also declares, that the king shall have *wreck of the sea* throughout the realm: the statute 3 Edw. 1. c. 4. E. & I. had previously declared and provided that where a man, a dog, or a cat escaped alive, the ship or vessel should not be adjudged wreck, but that the goods should be saved and kept by the view of the sheriff, coroner, or king's bailiff, and delivered into the hands of such as were of the town where they should be found, to the end that if any person should within a year and a day sue for those goods,

goods, and prove that they were his, or his lord's, or perished in his keeping, they should be restored to him without delay, or otherwise remain to the king, and be seized by the sheriff, &c. and delivered to those of the town, who should afterwards answer for the same before the justices. And the 4 Edw. 1. st. 2. E. & I. *de officio coronatoris* also provided, that wheresoever any wreck of the sea should be found, any person who should lay hands on it should be attached by sufficient pledges, and the price of the wreck be valued and delivered to the town. The several provisions and humane regulations which have been made by the salvage acts in England and Ireland, for the prevention of wrecks and for the preservation of the property in them, will be found in other parts of this work to which they seem more properly to belong.

XI. With respect to the *king's right to mines*, as connected with his prerogative of coinage. The 5 W. & M. c. 6. Eng. (which explains and amends the 1 W. & M. st. 1. c. 30. Eng.) declares and enacts that the owners or proprietors of any mine in England, &c. in which there is copper, tin, iron, or lead, may continue to hold and work the same, notwithstanding that such mine or ore shall be pretended or claimed to be a royal mine. But by s. 2. & 3. the king may have the ore of any such mine first paying for the same, within 30 days after the ore shall be raised and laid upon the bank, and before the same shall be removed, the following rates, viz. for all ore washed made clean and merchantable, wherein there is copper, £16. per ton; so wherein there is tin, 40s. per ton; and where there is iron, 40s. per ton; and so also for lead ore at the rate of £9. per ton; otherwise such proprietors may dispose of such ores to their own uses; but this act contains a saving, by s. 4. for the tanners of Devon and Cornwall. The 4 Ann. c. 12. Ir. contains similar provisions. The observa-

§ 11.

King's right to mines.

1 W. & M. st. 1.

c. 30. Eng.

5 W & M. c. 6.

Eng.

s. 2 & 3.

s. 4.

4 Ann. c. 12. Ir.

XII. The

§ 12.

Custody of idiots
and lunatics.17 Edw. 2. st. 1.
c. 9. E. & I.

c. 10.

14 Geo. 3. c. 49.
Eng.Private mad-
houses.

s. 21.

XII. The statute *de prerogativa regis*, 17 Edw. 2. st. 1. c. 9.E. & I. declares that the king shall have the *custody of the lands of natural fools*, taking the profits of them without waste or destruction, and shall find them their necessities, of whose fee soever the lands be holden; and after the death of such *idiots*, he shall render it to the right heirs, so that such *idiots* shall not alien, nor their heirs be disinherited: and as to *lunatics* by another branch of this statute (c. 10.) when any that has had his wit and memory shall be *non-compos mentis*, the king shall provide that his lands and tenements shall be safely kept without waste, &c. and that he and his household shall live and be maintained competently with the profits of the same, and the residue be kept to his use to be delivered unto him when he shall come to his right mind, so that the same be not aliened, and the king shall take nothing to his own use; and this act provides that when any party shall die in such estate, the residue shall be distributed for his soul, by the advice of the ordinary; but this superstitious provision seems to be done away by the statute of distributions. The 14 Geo. 3. c. 49. Eng. prohibits any person from harbouring or confining more than one lunatic at a time in any house or place kept for the reception of lunatics, upon pain of forfeiting £500. except such lunatics as shall be committed by the chancellor, or unless licensed by the commissioners appointed by the college of physicians in London, or (in places not within 7 miles of the city of London or not within the county of Middlesex) by the justices at some quarter sessions of the peace: And by s. 21. any keeper of any such licenced house or place who shall admit any person as a lunatic, without having an order in writing under the hand and seal of some physician, surgeon, or apothecary, that such person is proper to be received into such house, &c. shall forfeit £100.; and the same forfeiture is incurred by not giving notice of every lunatic so received, within 3 days in London, &c. and within 14 days in places not within 7 miles of London or Westminster, or within the county of Middlesex, after any lunatic shall be received or admitted. This act has not been followed by any similar act in Ireland, but though no Irish statute contains

contains provisions for the regulation of private mad-houses corresponding to this English act, the 27 Geo. 3. c. 39. s. 8. Ir. empowers the grand juries of the several counties, counties of cities and towns in Ireland, to present such sums of money as shall appear to them to be necessary, for providing and supporting wards for the reception and support of such insane persons and idiots, as shall be from time to time recommended by 2 or more magistrates of such county, which magistrates shall certify that the persons so recommended are idiots or insane, and destitute of any means of support. The 48 Geo. 3. c. 96. E. & W. also provides for the erection of lunatic asylums in such counties in England or Wales, where the same shall be deemed necessary, by the justices at the general quarter sessions, the expenses of which shall be defrayed by the respective counties where the same shall be built; and this act authorizes the justices, upon the application of the overseers of the poor of any parish within such county, to issue their warrant for the conveyance of any lunatic, insane person, or dangerous idiot, who may be chargeable to the parish, to such asylum.

27 Geo. 3. c. 39. s. 8. Ir.

Public mad-houses.

48 Geo. 3. c. 96. E. & W.

XIII. Having thus taken a view of the several branches of the ordinary revenue in England and Ireland, I proceed to a brief comparison of the statutes which respect the extraordinary revenue, arising from the taxes or duties, in each country. The *land tax* in England, which was an annual tax, has been made perpetual by the 38 Geo. 3. c. 60. Eng. subject however to redemption and purchase in the manner therein mentioned. And by the 48 Geo. 3. c. 102. G. B. special commissioners are appointed for carrying into execution such of the powers and provisions of the 38 Geo. 3. c. 5. Eng. which is intitled "An act for granting an aid to his majesty, by a land tax to be raised in Great Britain for the service of the year 1793" as are continued for ever by the 38 Geo. 3. c. 60. But in Ireland though subsidies or assessments upon lands, as well as personal estates, have been resorted to for supplying the exigencies of government, at several periods of the Irish history, no land tax has ever been imposed by authority of any act of parliament.

§ 13.

Land tax.

XIV. The

§ 14.

Malt tax.

XIV. The annual *malt tax* was first imposed by the 8 & 9 W. 3. c. 22. Eng. and by the 12 Ann. st. 1. c. 2. Eng. was placed under the management of the commissioners of the excise. The 1 Geo. 3. c. 3. Eng. is intitled, "An act for continuing and granting to his majesty certain duties upon malt, mum, cider, and perry for the service of the year 1761," and this duty which was granted and continued by this and subsequent statutes is continued by the 48 Geo. 3. c. 2. s. 1. G. B. from the 23d day of June, 1808 to the 24th day of June, 1809. An additional perpetual excise of 3*d.* a bushel on malt made in England, and of 1½*d.* on malt made in Scotland, was laid on by the 33 Geo. 2. c. 7. Eng. and a further duty of £15. *per cent.* upon the produce of the duty so payable by this act, was added by the 19 Geo. 3. c. 25. Eng. The malt duty was first made a part of the inland excise of Ireland by the 25 Geo. 3. c. 3. Ir. the last statutes defining its amount and regulating the mode of its collection are the 48 Geo. 3. c. 78. & c. 79 I.

§ 15.

The Customs.

* Sir J. Davies' Tracts, page 31

XV. The *customs*, or duties upon merchandize exported or imported, are a part of the ancient and hereditary revenues in England and Ireland. The duties upon wool, sheep-skins or woolfells, and leather, which were payable in England, so far back as the reign of Edward I. as appears from the statute 25 Edw. 1. c. 7. have been levied in Ireland also from a remote period. Sir John Davies, who wrote in the reign of James I. states,* that he had inspected the pipe rolls of Ireland for 250 years, that the customs did not at any time exceed £1000. *per annum*, but that the greatest profit did arise by the cocquet of hides; wool and woolfells being of little value in this kingdom. The exportation of wool was first prohibited in England by the 11 Edw. 3. c. 1.; but the 28 Geo. 3. c. 38. Eng. which consolidates the laws for preventing the exportation of live sheep, wool, &c. has been modified with respect to Ireland by the 48 Geo. 3. c. 44. The export of wool from Ireland was first prohibited by the 13 Hen. 8. c. 2. Ir. but this prohibition was done away by the subsequent statutes imposing a duty upon its export. The right of the crown to the more ancient cus-

toms

tom or duty of prisage, which in England has been traced by Mr. Maddox* in his history of the exchequer to the reign of Richard I., is now enjoyed by the earl of Ormonde in Ireland† by a title derived from king Henry II. In England it is due at the rate of 1 tun out of 10, for which the crown pays the merchant 20s. by way of compensation for freight.‡ But in Ireland, when the quantity of wines imported in any one ship amounts to 9 tuns, and under 18 tuns, single prisage or 1 tun is taken; when such quantity amounts to or exceeds 18 tuns, double prisage or 2 tuns are taken; but no money is paid to the merchant. In Ireland as in England this duty is taken either in kind according to its original institution, viz. one half before the mast, and the other half behind the mast; or a certain sum is paid in lieu thereof by agreement or composition with the importer. The charter of Edward I. by which this duty was commuted, with regard to foreign merchants, for 2s. on every tun of wine imported into England (which duty is called butlerage) does not extend to Ireland; though in the Act of Customs (14 & 15 Car. 2. c. 9. Ir.) and other statutes, this duty is designated by the name of prisage and butlerage. By the 43 Geo. 3. c. 156. and 46 Geo. 3. c. 59. the commissioners of the treasury of Great Britain are enabled to contract for the purchase of the duties of prisage and butlerage of wines, with the chancellor and council of the duchy of Lancaster as representing his majesty; with the prince of Wales in right of the duchy of Cornwall; with the duke of Beaufort, who claims the prisage, &c. within the ports of Swansea and Chepstow; with the marquis of Bute, who claims this duty within the port of Cardiff in Wales; and with the duke of Grafton, who claims the prisage and butlerage of all wines brought into any port of England, not being within the principality of Wales or earldom of Chester, except Liverpool and other ports in Lancaster, to which the king is entitled, and except Plymouth in Devon and the ports in Cornwall, the right to which is in the prince of Wales. And by the 46 Geo. 3. c. 94. I.

Prisage.

*Vol. 1. p. 765.

†Howard's Rev. v. 1. p. 75.

Butlerage.

VOL. I.

O

the

‡ The 35 Edw. 3. c. 21. E. & I. and 43 Edw. 3. c. 3. E. & I. were passed to restrain the exactions of the king's butlers.

*Tunnage and
poundage.*

the commissioners for executing the office of lord high treasurer of Ireland are enabled to contract with the earl of Ormonde for the purchase of the duties of prisage and butlerage in Ireland. The ancient duties of tunnage and poundage were granted to the crown by various acts of parliament in England from the reign of Edward III. And in Ireland by the 14 Hen. 7. c. 1. Ir. tunnage and poundage are recited to be duties belonging to the king. By the 15 Hen. 7. Ir. a duty of 12*d.* was imposed on every 20*s.* worth of merchandize imported or exported, wine and oil only excepted. This duty was called in Ireland "The old poundage;" the Act of Customs (14 & 15 Car. 2. c. 9. Ir. having imposed another duty of 12*d.* in the pound, on all goods exported or imported by merchants, strangers, or other aliens, except wines and oils, upon which a particular tunnage duty was payable by this statute. The ancient duties of tunnage and poundage are merged in the new duties imposed by the several acts consolidating the duties of excise and customs, which will be presently mentioned. By the 12 Car. 2. c. 4. Eng. aliens and strangers were liable to higher rates for the tunnage and poundage duties or subsidies, than natural born subjects, and this statute was followed in this respect by the 14 & 15 Car. 2. c. 9. Ir.; but this aliens duty, which was commonly called "The petty custom," was discontinued by the 24 Geo. 3. c. 16. Eng. This act contains a saving, however, for the duties granted by charter to the corporation of London. But in Ireland aliens were liable to pay a higher rate of tunnage than natural born subjects by the 14 & 15 Car. 2. c. 9. s. 2. Ir. as also (by the 53*d* rule) a double custom or subsidy on the import or export of the articles mentioned in this act or in the book of rates thereto annexed. But by the consolidation of the customs with the excise, which will be presently explained, the aliens duty has been indirectly repealed, except in the instance of tobacco alone, which is liable to an additional rate of duty, when imported by strangers into Ireland. It may be here also observed that by prescription or ancient custom a duty of 4*d.* per tun is payable by all foreign ships trading to Ireland, and collected upon their arrival.

Aliens duty.

arrival in any port, towards the support of his majesty's light-houses. This duty has been placed under the management of the commissioners of the revenue by the letter of queen Anne, dated 22d November, 1704, *upon the surrender of a certain patent granted by king Charles II. to the earl of Abercorn.

*Howard's Rev.
vol. 1. p. 81.

§ 16.
Excise.

XVI. The duty of *excise* is distinguishable as a new impost from the more ancient customs, and as an inland imposition under the management of the commissioners of excise, from the port duties or customs which are received by the collectors and other officers of the respective ports. This duty is called by the name of "New Impost" in the 12 Car. 2. c. 23. Eng.; and the 14 & 15 Car. 2. c. 8. Ir. is intitled "An act for settling the excise or new impost upon his majesty, his heirs and successors, according to the book of rates therein inserted." By the former statute it was confined to beer, ale, and other liquors; but by the latter almost every possible article of import was made liable to this excise duty, to be paid by the first buyer or importer, as well as beer, ale, and other liquors made within the kingdom.

The duties of excise and customs which were formerly paid in England according to two books of rates annexed to the 12 Car. 2. c. 4. Eng. and 11 Geo. 1. c. 7. Eng. as altered by subsequent statutes, were consolidated by the 27 Geo. 3. c. 13. Eng. but many new duties having been imposed, the 43 Geo. 3. c. 68. G. B. has been since also passed to repeal the duties of customs payable in Great Britain and to grant other duties in lieu thereof; and by the 43 Geo. 3. c. 69. G. B. the duties of excise theretofore payable in Great Britain have been also repealed and others substituted in their place. Two books of rates were also annexed to the 14 & 15 Car. 2. c. 8. Ir. called the Act of Excise, and to the 14 & 15 Car. 2. c. 9. Ir. called the Act of Customs, but the duties of customs and excise, payable by these and other acts, were first consolidated by the 31 Geo. 3. c. 1. Ir.; and the 45 Geo. 3. c. 18. I. is the last act consolidating and augmenting these duties; some alterations have been since also made by subsequent statutes in respect to the amount and mode of collecting these several duties in Great Britain and Ireland.

Customs.

Excise.

*Import-excise,
and customs con-
solidated in Ire-
land.*

Exciseable articles.

The duties of customs are payable upon almost every article of import, as well as upon many exported or carried coastwise, which are of course too numerous to detail; but the duties of excise in England are levied upon auctions, beer, bricks and tiles, candles, cocoa-nuts and coffee, cider and perry, glass, hides and skins, hops, licenses, malt, metheglin or mead, paper, printed goods, salt, soap, spirits, starch, sweets, tea, tobacco and snuff, verjuice, vinegar, wine, and wire; and in Ireland the inland duties of excise are levied by the 47 Geo. 3. st. 1. c. 18. I. upon auctions, cards and dice, glass bottles, leather, metheglin or mead, paper-manufacture, paper-hangings, plate wrought, sweets or made wines, tobacco, vellum or parchment, and vinegar; and upon malt and spirits by the 48 Geo. 3. c. 78. I.; which are the last acts imposing duties on these articles.

§ 17.
Salt duty.

XVII. The 5 W. & M. c. 7. Eng. is the first statute by which the *duty on salt* was imposed; which placed it within the receipt of the commissioners of excise: but by the 1 Ann st. 1. c. 21. Eng. the receipt of this duty was transferred to particular commissioners. This duty was made perpetual by the 26 Geo. 2. c. 3. Eng. and several statutes have been since passed in respect to this duty. This article has been made subject to an increased duty of customs by the 43 Geo. 3. c. 68. G. B. and to a duty of excise by the 43 Geo. 3. c. 69. G. B.; and the 45 Geo. 3. c. 14. G. B. which imposed an additional duty, provides that it shall be under the management of the commissioners of the excise. In Ireland salt was made liable to an import-excise duty by the 14 & 15 Car. 2. c. 8. Ir. and to the duty of customs by the 14 & 15 Car. 2. c. 9. Ir. The 45 Geo. 3. c. 18. I. has consolidated and augmented these duties amongst others.

§ 18.
Post-office.

XVIII. With respect to the *revenue of the post-office*, I have only to observe, that the first statute erecting and establishing a post-office in England was the 12 Car. 2. c. 35. Eng.: but the 23 & 24 Geo. 3. c. 17. Ir. was the first statute passed for the support of his majesty's government and the convenience of trade by the establishment of a post office in Ireland. The 41 Geo. 3. c. 7. is the last act regulating the rates of postage in Great Britain:

Britain: and the duties upon letters and packets sent by the post within Ireland are levied by virtue of the 43 Geo. 3. c. 28. I. and 45 Geo. 3. c. 21. I.

XIX. The first institution of the *stamp-duties* appears to have been in England by the 22 & 23 Car. 2. st. 2. c. 9. Eng.: but the first stamp act passed in Ireland is the 13 & 14 Geo. 3. c. 6. Ir. The stamp duties payable in Great Britain were consolidated by the 44 Geo. 3. c. 98. G. B. and have since undergone some modifications by the 45 Geo. 3. c. 28—46 Geo. 3. c. 43. and 48 Geo. 3. c. 149 & c. 143. And in Ireland these duties have been also consolidated by the 47 Geo. 3. st. 1. c. 50. I. which statute has been since amended by the 47 Geo. 3. st. 2. c. 14. I. and 48 Geo. 3. c. 41. I.

§ 19.

Stamp duty.

XX. The duty payable by *hawkers and pedlers*, &c. is another branch of the extraordinary perpetual revenue, which was first imposed by the 9 & 10 W. 3. c. 27. Eng. and since increased by the 29 Geo. 3. c. 26. Eng. These petty chapmen, or other trading persons of that description, are required to be licensed in Ireland, and are liable to a stamp duty in that respect by the 48 Geo. 3. c. 41. I. and the previous stamp acts.

§ 20.

Duty upon hawkers and pedlers.

XXI. Similar to the last, is the revenue arising from licenses to *hackney coaches and chairs*, within the cities of London and Westminster and the suburbs thereof. A duty upon hackney coaches was first imposed by the 13 & 14 Car. 2. c. 2. Eng.; and the last act laying a duty thereon is the 24 Geo. 3. c. 27. Eng. The commissioners are also authorized to license chairs by the 9 Ann. c. 23. Eng.

§ 21.

Licenses to hackney coaches and chairs.

XXII. The duty upon *houses and windows* which was first established in England by the 7 & 8 W. 3. c. 18 Eng. has been since increased by several subsequent statutes. The 48 Geo. 3. c. 55. G. B. is the last act ascertaining the duties payable for every dwelling-house in Great Britain (with certain exceptions) according to the number of windows or lights, as also the duties payable on inhabited dwelling-houses according to the value thereof. The hearth-money tax (to which this succeeded) which was introduced in England by the 13 & 14 Car. 2. c. 10. was abolished by the 1 W. & M. st. 1. c. 10. Eng.; but this duty upon hearths has been a house tax levied in Ireland

§ 22.

*House and window tax.**Hearth-money and window tax in Ireland.*

.since

since the 14 & 15 Car. 2. c. 17. Ir. was passed establishing this branch of the revenue in recompence for the profits of the court of wards. By the 48 Geo. 3. c. 42. I. certain duties and taxes are granted to his majesty upon fire hearths and windows, in lieu of all former duties, &c. in respect to the like articles. But this statute does not increase the taxes upon houses and tenements, (not chargeable with hearth money or window tax), which are payable in respect of their yearly rent or value by the 47 Geo. 3. st. 1. c. 18. I.

Rent Tax. The duty payable in respect of *servants* which was first established by the 17 Geo. 3. c. 39. Eng. was first imposed in Ireland by the 38 Geo. 3. c. 5. Ir. and the last statute ascertaining the duties payable in Great Britain for male servants in proportion to their number and according to the capacities in which they are employed is the 48 Geo. 3. c. 55. The taxes payable for male servants in Ireland are defined and regulated by the 48 Geo. 3. c. 42. I.

Servant's tax. The next branch of the extraordinary revenue which I shall consider in this place is the duty upon *carriages*, which is a branch of revenue established since Sir Wm. Blackstone's time, and is payable in proportion to their number and according to their construction. This tax is also defined by the 48 Geo. 3. c. 55. G. B. with respect to Great Britain; and with relation to Ireland by the 48 Geo. 3. c. 42. I.

Carriage tax. Next in order is the tax upon *horses, mares, geldings, and mules*. The last statute ascertaining the rates payable in Great Britain in respect to horses, &c. is the 48 Geo. 3. c. 55. G. B.; and horse-dealers are thereby also liable to an annual duty. The 48 Geo. 3. c. 42. I. contains also a schedule of the duties payable for horses, &c. in Ireland, but this statute does not impose any special duty or tax upon horse-dealers.

Tax for horses, &c. These statutes, 48 Geo. 3. c. 55. G. B. and 48 Geo. 3. c. 42. I. also impose new duties upon *persons keeping dogs*, with respect to their number and description in Great Britain and Ireland respectively.

Upon horse dealers, Another personal tax payable in Great Britain is in respect of *hair-powder used or worn*, which duty is also

also increased by the 48 Geo. 3. c. 55. G. B. but no such tax is payable in Ireland.

The tax upon persons in respect of any *armorial bearing or ensign* used or worn by them, is also a modern tax and one peculiar to Great Britain, the amount whereof is also increased by the 48 Geo. 3. c. 55. G. B. *For armorial bearings,*

This statute 48 Geo. 3. c. 55. G. B. also imposes new additional duties upon persons in respect of *killing game*. And by the 43 Geo. 3. c. 23. I. certain duties are payable upon certificates with respect to the killing of game in Ireland; which duties have been since increased by the 47 Geo. 3. st. 1. c. 50. I. which consolidates the stamp duties payable in Ireland. *For killing game*

These several classes of taxes or branches of revenue arising from houses, windows, servants, carriages, horses, and horse dealers, dogs, hair-powder, armorial bearings, and game, are called in Great Britain "Assessed taxes," being collected in the several parishes, wards and places, by assessors appointed by the commissioners of the land tax, and are placed under the management of the commissioners for the affairs of taxes. And the inland duties or taxes which are levied under the 47 Geo. 3. st. 1. c. 18. I. upon certain houses and tenements, and by the 48 Geo. 3. c. 42. I. upon fire-hearths, windows, male servants, carriages, horses, and dogs, are placed under the management of the commissioners of inland excise and taxes, in Ireland. These several taxes in Great Britain and Ireland and the statutes which impose them are perpetual or their duration unlimited, though some of them were in their original institution but annual or temporary. *Assessed taxes of Great Britain*

XXIII. By the 43 Geo. 3. c. 70. G. B. 44 Geo. 3. c. 53. G. B. and 46 Geo. 3. c. 42. G. B. additional duties on the importation and exportation of certain goods, wares and merchandize, and on the tunnage of ships and vessels in Great Britain, and on goods, &c. carried coastwise, are granted to his majesty during the present war and for 6 months after. And by the 46 Geo. 3. c. 39. G. B. and 47 Geo. 3. st. 1. c. 27. G. B. additional duties of excise are also granted to his majesty until 12 months after the ratification of a definitive treaty of peace; but by the 47 Geo.

§ 23.

War taxes.

Geo. 3. st. 1. c. 55. and 48 Geo. 3. c. 92. these war taxes, granted by the 43 Geo. 3. c. 70. and 46 Geo. 3. c. 39. are charged with the sum of 12 millions which was raised for the service of the year 1807.

§ 24.
Property tax.

XXIV. Another species of war tax consists in the duties on profits arising from *property, professions, trades, and offices* in Great Britain, which rates or duties have been increased and consolidated by the 46 Geo. 3. c. 65. G. B. This property tax is of a temporary nature, being limited in its duration by this act to the 6th day of April next after the ratification of a definitive treaty of peace.

§ 25.
Duties upon offices and pensions.

XXV. The duties upon *offices and pensions* which were first imposed by the 7 Geo. 1. st. 1. c. 27. Eng. and 31 Geo. 2. c. 22. Eng. are similar to the property tax. These duties which were formerly perpetual, are by the 48 Geo. 3. c. 2. s. 19. G. B. to have continuance only for one year from the 25th March, 1808; and by s. 20. & 21. are to be assessed in like manner as the property tax under the provisions of the 46 Geo. 3. c. 65. and under the direction of the same commissioners. No duty is payable in respect of offices or pensions in Ireland in aid of his majesty's revenue. By the 2 Geo. 1. c. 3. Ir. and several subsequent statutes a tax of 4s. *per* £. was imposed upon persons having any offices, salaries, employments, fees, or pensions upon his majesty's establishment, who should reside out of Ireland, for 6 months in any year, while they should be so absent; which tax was repealed or discontinued by the 41 Geo. 3. c. 100. I.

Pells and poundage.

*Howard's Rev.
v. 2. p. 209-230.

It may be here observed that the clerk of the pells in Ireland claimed by prescription in right of his office* a penny and one-fifth *per* £. upon all payments issued out of the exchequer, (except where excluded therefrom by express words in particular acts of parliament); a fee also of 6d. *per* £. was payable to the vice-treasurer, receiver-general and paymaster-general of Ireland, by all persons on his majesty's establishment for salaries, pay, pensions, &c. These sums are still received or deducted at the Irish treasury, but are now brought to the credit of the public, the offices of receiver-general and paymaster-general having been abolished by the 35 Geo. 3. c. 28. Ir. and the receipts and issues of the

the treasury then placed under the controul of commissioners for executing the office of high treasurer of Ireland.

XXVI. Another source of extraordinary revenue, or annual aid, consists in the profit arising from *lotteries*. The last act granting a sum of money to be raised by lotteries is the 48 Geo. 3. c. 139. U. K: which provides (s. 3.) that the commissioners of the treasury shall retain out of the money arising from the sale of the tickets, such proportion thereof as may be necessary to be paid to the holders of the fortunate tickets, and that one-third of the surplus money shall be applied to the service of Ireland.

§ 26.

Lotteries.

I have thus confined myself to an enumeration of the several sources of extraordinary revenue in Great Britain and Ireland. The acts imposing these several duties and aids, as well as the statutes for securing and regulating their collection, are very numerous. It would be therefore incompatible with the plan and object of this work, to detail their various minute and complicated provisions.

It seems to be proper in this place to refer to the 6th article of the act for the union of Great Britain and Ireland, (40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng.) which provides that the subjects of Great Britain and Ireland shall be entitled to the same privileges, and be on the same footing as to encouragements and bounties, on the like articles being the growth, produce, and manufacture of either country respectively, and generally in respect of trade and navigation in all ports and places in the united kingdom and its dependencies; and that in all treaties made by the king with any foreign power, his subjects of Ireland shall be on the same footing as his subjects of Great Britain. That all prohibitions and bounties on the export of articles the growth, &c. of either country to the other shall cease: and that the said articles shall be exported from one country to the other without duty or bounty; and further, that all articles the growth, &c. of either country, (not herein enumerated as subject to specific duties) shall be imported into each country from the other free from duty, other than such countervailing duties as in the schedule to this article annexed

*Trade between
Great Britain
and Ireland re-
gulated by the
Act of Union.*

*Prohibitions and
bounties to cease*

*Duties on import
of certain arti-
cles defined—all
others free.*

Woollen manu-
factures.

Salt and hops.

Coals.

Callicoes and
muslins.

Cotton-yarn and
twist.

Countervailing
duties.

Drawbacks.

nexed are specified, or such other countervailing duties as shall be imposed by the parliament of the united kingdom; and that for 20 years from the union, the articles enumerated in a second schedule, shall be subject on importation into each country from the other, to the duty of £10. *per cent.* on the true value. That the woollen manufactures, known by the names of old and new drapery, shall pay on importation into each country from the other, the duties *then* payable on importation into Ireland. That the duties on salt and hops, on importation into Ireland from Great Britain, shall not exceed those *then* paid on importation into Ireland; and coals, on importation into Ireland from Great Britain, shall be subject to burthens not exceeding those to which they were *then* subject. That the duties upon callicoes and muslins, on their importation into either country from the other, shall from the 5th day of January, 1808, be annually reduced by equal proportions as near as may be in each year, so that said duties shall stand at £10. *per cent.* from the 5th day of January, 1806, until the 5th day of January, 1821; and that the duties upon cotton-yarn and twist, on their importation into either country from the other, shall from the 5th day of January, 1808, be annually reduced by equal proportions as near as may be in each year, so that all duties shall cease on said articles from the 5th day of January, 1816. That articles of the growth, &c. of either country, which are or may be subject to internal duty, or to duty on the materials of which they are composed, may be made subject, on their importation into each country from the other, to such countervailing duty as shall appear to be just in respect of such internal duty, &c. and that for the said purposes the articles specified in a schedule hereby referred to, shall be subject to the duties set forth therein, liable to be taken off, diminished, or increased, in the manner herein specified. And that upon the export of the said articles from each country to the other, a drawback shall be given equal in amount to the countervailing duty payable on such articles; and that the united parliament may impose any new additional countervailing duties, or take off or diminish such countervailing

tervailing duties as may appear on the like principle to be just, in respect of any future or additional internal duty on such articles, or on the materials of which they may be composed, or of any abatement of duty on the same; and that when any such new or additional countervailing duty shall be so imposed, on the import of any article into either country from the other, a drawback equal in amount to such countervailing duty, shall be given in like manner on the export of such article from the same country to the other. That all articles the growth, &c. *Same charges on produce of either country exported thro' the other.* of either country, when exported through the other, shall be exported subject to the same charges as if they had been exported directly from the country of which they were the growth, &c. That all duty on the import *Foreign produce* of foreign or colonial goods into either country, shall on their export to the other be either drawn back, or the amount (if any be retained) shall be placed to the credit of the country to which they shall be exported, so long as the expenditure of the united kingdom shall be defrayed by proportional contribution. But nothing herein *Corn, meal, malt, &c.* shall take away any duty, bounty, or prohibition which exists in respect to corn, meal, malt, flour, or biscuit, but the same may be regulated, varied, or repealed, from time to time by the united parliament.

The produce of the several taxes, which were origi- *Consolidated fund,* nally distinct funds, were made to compose one consolidated fund by the 27 Geo. 3. c. 13. Eng. which enacts (s. 52.) that all public monies which shall arise and be paid into the receipt of the exchequer, not being particularly appropriated to any uses by any act of parliament made or to be made, shall be carried to and make part of the fund to be called "The consolidated fund." And the 33 Geo. 3. c. 34. s. 1. Ir. has also provided that the several duties and taxes, hereditary and casual revenues, and other public monies not being particularly appropriated, shall during his majesty's life constitute a consolidated fund in Ireland. Several branches of the revenue or the produce of particular taxes and duties, appear to have been appropriated, by different statutes passed in England in the reign of queen Anne, for the

the payment of several loans raised and debts then contracted. And by the 3 Geo. 1. c. 7. Eng. and several subsequent statutes, provision was made for redeeming the duties and revenues, which were from time to time charged with such debts, and with several annuities payable thereout.

Sinking fund. To this statute (3 Geo. 1. c. 7.) is to be traced the original institution of the sinking fund, it being thereby provided (s. 37.) that the excess or surplus of the duties and revenues appropriated by this act, and the general yearly fund which was thereby established, should be employed for the discharging the principal and interest of such national debts as were incurred before the 25th day of December, 1716, in such manner as should be directed by parliament. But the 26 Geo. 3. c. 31. Eng. is the first statute which directed the operation of this principle, and established the system of applying annually certain portions of the revenue to redeem, and after redeeming to accumulate for the further redemption of the national debt. By this act one million annually was to be applied by quarterly payments under the direction of commissioners, for the reduction of the debt; but it was thereby provided (s. 20.) that whenever the whole sum annually receivable by the commissioners (including the quarterly sum of £250,000. thereby directed to be issued from the exchequer, and the annuities and dividends of stock by them redeemed and placed to their account) should amount to 4 millions annually, the surplus should be at the disposal of parliament. This act was amended by the 32 Geo. 3. c. 55. which provided in order to prevent the accumulation of debt in consequence of any future loans, that one hundredth part of the capital stock created by any loan, or one hundredth part of the value of any annuity upon which a loan shall be raised, shall be payable by quarterly payments, out of the consolidated fund to the commissioners for the reduction of the national debt. And by the 42 Geo. 3. c. 71. these several sinking funds were consolidated, and the 26 Geo. 3. c. 31. and 32 Geo. 3. c. 35. thereby repealed so far as they limited the amount of the
sinking

sinking fund to be annually applied in the reduction of the debt. A sinking fund was also established for the reduction of the national debt of Ireland by the 37 Geo. 3. c. 27. Ir. which statute was framed upon the principle of the 32 Geo. 3. c. 55. Eng. a sum of £100,000. being thereby directed to be issued by quarterly payments and applied to the payment of the debt, by commissioners appointed for that purpose; and by this act, in like manner as by the 32 Geo. 3. c. 55. Eng. it is provided that on all future loans (save for paying off and lowering interest) if provision be not made for paying the whole of such loan in 45 years, there shall be a further annual sum equal to one-hundredth part of the capital stock created by such loan, set apart quarterly out of the consolidated fund, for the liquidation of such loan, to be issued at the exchequer and placed to the account of the commissioners for the reduction of the national debt, at the bank of Ireland.

By the 7th article of the act for the union of Great Britain and Ireland, it is provided that the interest and sinking-fund of the debt of either kingdom before the union, shall be separately defrayed by Great Britain and Ireland. That for 20 years after the union, (viz. from 1st January 1801) the contribution of Great Britain and Ireland toward the expenditure of the united kingdom in each year, shall be in the proportion of 15 parts for Great Britain and 2 parts for Ireland. That at the expiration of 20 years, the future expenditure (other than the interest and charges of the separate debt of each country) shall be in such proportion as the parliament of the united kingdom shall deem just, upon comparison of the value of the exports and imports of the respective countries upon an average of the 3 years next preceding the period of revision, or on a comparison of the value of the quantities of the following articles consumed within the respective countries upon a similar average, viz.: beer, spirits, sugar, wine, tea, tobacco, and malt; or according to the aggregate proportion resulting from both these considerations combined; or on a comparison of the amount of income in each country estimated from the produce

Separate debt of Great Britain and Ireland.

40 Geo. 3. c. 38.

Ir.

40 Geo. 3. c. 67.

Eng.

Rateable contribution towards expenditure.

produce for the same period of a general tax, (if such shall have been imposed,) on the same descriptions of income in both countries: and that the parliament of the united kingdom shall in like manner revise and fix the said proportions, at periods not more distant than 20 years, nor less than 7, from each other, unless previous to any such period the parliament of the united kingdom shall have declared, that the expenditure shall be defrayed by equal taxes, on the like articles, in both countries. And it is further provided that the revenues of Ireland shall constitute a consolidated fund, which shall be charged in the first instance with the interest of the debt of Ireland, and with the sinking fund applicable to the reduction of such debt, and the remainder applied toward defraying the proportion *[of the expenditure] of the united kingdom to which Ireland may be liable in each year. That the proportions of contribution to which Great Britain and Ireland will be liable, shall be raised by such taxes as the parliament of the united kingdom shall deem fit, provided that no article in Ireland shall be made liable to any new or additional duty, by which the whole amount of the duty payable thereon would exceed the amount which will be thereafter payable in England. That if at the end of any year any surplus shall accrue from the revenues of Ireland after defraying the interest, sinking fund, and proportional contribution and separate charges, taxes shall be taken off to the amount of such surplus, or the surplus shall be applied by parliament to local purposes in Ireland, or to make good any deficiency which may arise in its revenues in time of peace, or be invested by the commissioners of the national debt of Ireland in the funds, to accumulate for the benefit of Ireland at compound interest in case of the contribution of Ireland in time of war; provided that the surplus so to accumulate shall not be suffered to exceed 5 millions. That all monies to be raised after the union by loan, for the service of the united kingdom, shall be a joint debt, and the charges thereof borne by the respective countries in the proportion of their respective contributions; provided that if the parliament shall judge it fit to raise a greater proportion

*Consolidated
fund of Ireland,
how applied.*

** These words
omitted in the
Irish act.*

*No article more
highly taxed in
Ireland than in
England.*

*Application of
surplus of reve-
nues of Ireland.*

*All monies
raised after the
union, a joint
debt.*

proportion of such contributions, in one country within the year than the other, or to set apart a greater proportion of sinking fund for the liquidation of the whole, or any part, of the loan raised on account of the one country than of that raised on account of the other country, then such part of the loan, for the liquidation of which different provisions shall have been made for the respective countries, shall be kept distinct, and shall be borne by each separately, and only that part be deemed joint and common, *When separately charged.* for the reduction of which the respective countries shall have made provision in the proportion of their respective contributions. That if the separate debt of each country shall be liquidated, or if the values of their respective debts (estimated according to the amount of the interest and annuities attending the same, and of the sinking fund applicable to the reduction thereof, and to the period within which the whole capital of such debt shall appear to be redeemable) shall be to each other in the same proportion with the respective contributions of each country, or if the amount by which the value of the larger of such debts shall vary from such proportion shall not exceed one hundredth part of the said value, and if it shall appear to the parliament, &c. that the circumstances of the two countries will admit of their contributing by equal taxes, on the same articles in each, to the future expenditure of the united kingdom, the parliament, &c. may declare that all future expense, together with the interest and charges of all joint debts contracted previous to such declaration, shall be so defrayed by equal taxes on the same articles in each country, and so from thenceforth as circumstances may require, subject only to such exemptions or abatements in Ireland, and in Scotland, as circumstances may from time to time appear to demand. And from the period of such declaration, there shall be no specific proportion of contribution by the two countries toward the expenditure of the united kingdom; provided nevertheless that the interest or charges which may remain on account of any part of the separate debt, with which either country shall be chargeable, and which shall not be liquidated or consolidated proportionably

*Premiums for
agriculture, &c.
to be continued
for 20 years.*

*Application of
revenue arising
from territorial
dependencies.*

*Civil list of
Great Britain.*

proportionably as above, shall until extinguished continue to be defrayed by separate taxes in each country.

It is a part of the compact of union, and this article accordingly provides, that a sum not less than the sum which has been granted by the parliament of Ireland, on the average of 6 years immediately preceding the 1st day of January, 1800, in premiums for the encouragement of agriculture or manufactures, or for the maintaining institutions for pious and charitable purposes, shall be applied for 20 years after the union to such local purposes in Ireland as the parliament of the united kingdom shall direct. And lastly that all public revenue arising to the united kingdom from the territorial dependencies thereof, and applied to the general expenditure of the united kingdom, shall be so applied in the proportions of the respective contributions of the two countries.

Having in the preceding parts of this chapter briefly adverted to the several branches of the king's revenue, which as at present constituted, are more properly to be considered as the revenue of the public, being applicable or appropriated to public purposes: it remains only to consider the king's proper and peculiar revenue, which consists in the civil list establishment created by parliament for the support of his majesty's household and the honour and dignity of his crown. The 1 Geo. 3. c. 1. Eng. recites several statutes, in former reigns, by which certain duties of customs and excise as well as the *then* aggregate fund were charged with the civil list expenses; and in lieu of this income which was in part casual and uncertain, the aggregate fund was charged with the payment of an annuity or clear yearly sum of £800,000. to the crown; and by the 17 Geo. 3. c. 21. Eng. an additional sum of £100,000. *per annum*, was also made payable to his majesty during his life, out of the aggregate fund. These several sums were by the 27 Geo. 3. c. 13. c. 63. Eng. made payable out of and chargeable upon the consolidated fund which was created by this act. And by the 44 Geo. 3. c. 80. the further revenue or yearly rent of £60,000. *per annum*, is granted to his majesty out of the consolidated fund for the better support of his majesty's

jesty's household and of the honour and dignity of the crown of the united kingdom. By this statute also, which amends the 22 Geo. 3. c. 82. Eng. provision is made for preventing the accumulation of arrears, in the payments directed to be made out of the civil list revenues. A civil list establishment has been also created *Civil list of Ireland.* by the 33 Geo. 3. c. 34. Ir. (amended by the 45 Geo. 3. c. 76.) by which statute £145,000. *per annum*, is made payable out of the consolidated fund to his majesty during his life, to be applied by the high treasurer, vice-treasurer or vice-treasurers of Ireland, or such other person or persons as shall be authorized thereto, in payment of the salaries and other charges of the civil list, pensions excepted. By this act provision is made for reducing the pensions on the Irish establishment to £80,000. a year;* and it is provided (by s. 4.) that from such time as the pensions shall not exceed the sum of £80,000. yearly, a further sum of £80,000. in addition to the yearly sum of £145,000. shall be payable to his majesty out of the consolidated fund, to be applied in the payment of all salaries, pensions, and other charges of the civil list, according to the provisions of this act; and this act, as well as the 22 Geo. 3. c. 82. Eng. prescribes the order in which those several charges shall be paid, and imposes salutary restraints upon the issue of secret service money thereout.

CHAP. IX.

Of subordinate Magistrates.

AS to the *mode of appointing Sheriffs*, the 28 Edw. 1. § 1. st. 3. c. 8. E. & I. enacted or declared that the king's people should have the election of their sheriffs, in every shire where the shrivalty was not of fee: and the same statute (c. 13.) further ordain that the people of the county should choose such persons to be sheriffs as would

Mode of appointing sheriffs
28 Edw. 1. st. 3.
c. 8. E. & I.

c. 13.

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not

* By s. 8. no pension is to exceed £1,200. except to the royal family, or on an address of either house of parliament.

not overcharge them; and that they should not put any officer in authority, for rewards or bribes, or such as lodge too frequently in one place, or upon poor persons or men of religion. But these statutes in respect to the election of sheriffs were repealed by the 9 Edw. 2. st. 2. E. & I. which enacted that sheriffs should be assigned by the chancellor, treasurer, barons of the exchequer and justices; and that none should be sheriff, unless he had sufficient land within the county of which he was sheriff, to answer to the king and his people; and further that no person who was steward or bailiff to a great lord should be made sheriff, unless he was out of such service, so as to be able to attend the execution of his office as sheriff.

The 4 Edw. 3. c. 9. E. & I. and 5 Edw. 3. c. 4. E. & I. also required the sheriffs to have sufficient lands in their counties to answer the king and his people. The 14 Edw. 3. st. 1. c. 7. E. & I. further provided that no sheriff should tarry in his bailiwick more than one year, and then that another fit person having sufficient land in his bailiwick should be assigned in his place, by the chancellor, treasurer, and chief baron of the exchequer, taking to them the chief justices of the one bench and the other, if they should be present, and that such appointment should take place on the morrow of All-souls in every year, at the exchequer. But by reason of the abbreviation of the Michaelmas Term by the 24 Geo. 2. c. 48. Eng. the day of assembling at the exchequer for the appointment of sheriffs, is by s. 12. of this act, directed to be on the morrow of Saint Martin. By the 12 Ric. 2. c. 2. E. & I. the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and the other, barons of the exchequer, and all others that shall be called to ordain, name, or make justices of the peace, sheriffs, escheators, customers, comptrollers, and other officers of the king, shall be sworn not to ordain, &c. any justices of the peace, &c. for any gift or brocage, favour or affection, or any person that shall sue privily or openly to be put in office, but that they shall make all such officers and ministers of the best, most lawful, and

most

most sufficient. The * 10 Hen. 7. c. 1. Ir. enacted that the treasurer of Ireland should have as ample power as the treasurer of England, as to making customers, comptrollers, farmers, and other officers for the increase of the king's revenue; and declared that all acts made in Ireland concerning the election or making of sheriffs and escheators of shires and other officers, &c. contrary to this act, should be void, though it does not appear that there are any Irish acts (at least printed) to which this statute referred. The ancient method of appointing sheriffs in Ireland as far back as can be traced was thus:—The judges of assize on their summer circuits, required the sheriffs in office of the respective counties to return the names of 3 persons in each county proper to succeed them; and at a meeting of the judges in the chancellor's chamber on the morrow of All-souls in the following Michaelmas Term, the lord chancellor used to call on them for their returns, which when received he delivered to the lord lieutenant, who appointed one for each county out of every such return; but the judges had a power before they made their returns to alter the persons, or any of them, nominated to them, in their discretion, which is nearly similar to the custom in England. The modern practice is for the judges of assize of the several counties, to present to the lord lieutenant, the list of names so returned to them, without any previous meeting of the judges upon the occasion. The appointment of pocket sheriffs in England is a similar departure from the ancient custom.

The 3 Geo. 1. c. 15. s. 18. Eng. enacts, that instead of the oath usually administered to sheriffs, the following oath shall be taken by them (except the sheriffs of Wales and Chester):—"I, *A. B.* do swear that I will well and truly
 "serve the king's majesty in the office of sheriff of the
 "county of———and promote his majesty's profit in all
 "things that belong to my office, as far as I legally can or
 "may; I will truly preserve the king's rights, and all that
 "belongeth to the crown; I will not assent, to [†decrease,
 "lessen, or conceal the king's rights, or the rights of his
 "franchises; and whensoever I shall [‡have knowledge]
 "that the rights of the crown are concealed or withdrawn,

Their oaths of qualification.

3 Geo. 1. c. 15. s. 18. Eng.

† Omitted in 12 Geo. 1. c. 4. Ir.

‡ *Know.* in 12 Geo. 1. c. 4. Ir.

*Have them, in
12Geo.1.c.4.Ir.

“ be it in lands, rents, franchises, suits, or services, or in
 “ any other matter or thing, I will do my utmost to [*make
 “ them be] restored to the crown again; and if I may not
 “ do it myself, I will certify and inform the king thereof,
 “ or some of his judges; I will not respite or delay to
 “ levy the king’s debts for any gift, promise, reward or
 “ favour, where I may raise the same without great
 “ grievance to the debtors; I will do right, as well to
 “ poor as to rich, in all things belonging to my office;
 “ I will do no wrong to any man, for any gift, reward,
 “ or promise, nor for favour or hatred; I will disturb no
 “ man’s right, and will truly and faithfully acquit at the
 “ exchequer all those of whom I shall receive any debts
 “ or duties belonging to the crown; I will take nothing
 “ whereby the king may lose, or whereby his right may
 “ be disturbed, injured or delayed; I will truly return
 “ and truly serve all the king’s writs, according to the best
 “ of my skill and knowledge; I will take no bailiffs into
 “ my service, but such as I will answer for, and will
 “ cause each of them to take such oaths as I do, in what
 “ belongeth to their business and occupation; I will
 “ truly set and return reasonable and due issues of them
 “ that be within my bailiwick, according to their estate
 “ and circumstances, and make due panels of persons
 “ able and sufficient, and not suspected or procured, as
 “ is appointed by the statutes of this realm; I have not
 “ sold [†or] let to farm, nor contracted for, nor have I
 “ granted or promised for reward or benefit, nor will I
 “ sell or let to farm nor contract for, or grant for reward
 “ or benefit, by myself or any other person for me or
 “ for my use, directly or indirectly, my sheriffwick, or
 “ any bailiwick thereof, or any office belonging thereunto,
 “ or the profits of the same, to any person or persons
 “ whatsoever; I will truly and diligently execute the
 “ good laws and statutes of this realm; and in all things
 “ well and truly behave myself in my office, for the ho-
 “ nour of the king and the good of his subjects, and
 “ discharge the same according to the best of my skill
 “ and power.—So help me God.” Which oath is to be
 administered either by commissioners in the country by
 virtue

† Nor, in
12Geo.1.c.4.Ir.

virtue of a commission or *dedimus*, or by the barons of the exchequer, or one of them, when the sheriff desires to be sworn in town. And the same oath is required to be administered in like manner to all sheriffs in Ireland by the 12 Geo. 1. c. 4. s. 13—15 Ir.; but the 25 Geo. 3. c. 36. Ir. has amended the 12 Geo. 1. by providing that in future the said oath shall be administered by the barons of the exchequer or any of the judges of K. B. or C. B. or any one of them; and further enacts (s. 2.) that upon the 2d day of each spring assizes in every year, there shall be administered in open court, by the judge who shall preside in the crown court, at every assizes, to the high sheriff, sub-sheriff or under sheriff of such county where such assizes shall be had, the following oath:—“I, *A. B.* high sheriff, sub-sheriff, or under sheriff of the county of———(as *the case shall be*) do swear, that I have during the time I have been in the office of high-sheriff, sub-sheriff, or under-sheriff, of the county of———(as *the case shall be*) faithfully and honestly, according to the best of my skill and judgment, executed, and that I will whilst I continue in the said office execute, according to the best of my skill and judgment, all executions, writs, process, orders, or warrants which already have, or shall hereafter come into my hands, or to be lodged in my office, and make speedy, and to the best of my judgment, proper returns, to such of them as are by law returnable, to the courts from whence they respectively issued; and that I will take, or cause to be taken, all inquisitions, fairly and openly, giving such notice as the law requires to such persons as are parties to such suits, and duly return such inquisitions; and that I will impanel and return all jurors, or *tales* jurors, without partiality or favour, and not at the nomination or direction of any of the parties concerned, or any person on their behalf, but will do equal right to the poor and rich; and that I will truly set and return all issues of such as are within my bailiwick, according to their estates and circumstances, and that I will not remit or delay, or decline doing any part of the duty of my office, by reason of any reward or gratuity, or

“ promise

Same oath by sheriffs in Ireland.
12 Geo. 1. c. 4. s. 13. Ir.
25 Geo. 3. c. 36. s. 1. Ir.
s. 2.
Further oath at assizes.

“ promise of any reward or gratuity ; nor will I take re-
 “ ceive or demand any fee whatsoever, but what I am en-
 “ titled to receive by the laws and statutes of this realm.”

s. 3. By s. 3. if the high-sheriff, &c. or any of them, shall
 not attend at such lent assizes, then the said oath shall
 be administered to such sheriff, &c. on the 2d day of
 s. 4. the summer assizes. But by s. 4. if such sheriff, &c. shall

*Penalty for re-
 fusal or neglect.*

refuse or neglect to take such oath either at the lent or
 summer-assizes, he shall forfeit £100. to be recovered by
 action of debt, &c. in any court of record in Dublin, one
 moiety thereof to the use of the person suing, &c. and
 the other to the use of the public infirmary of the county.

s. 5.

*Oath of sheriffs
 of cities.*

And this act, s. 5. recites that it is expedient to extend
 the provisions of the 12 Geo. 1. c. 4. to cities as well as
 counties, and enacts that every sheriff of every city shall,
 before his admission into office, take before the person
 who is to admit him into said office, in addition to the
 other oaths required by law, the following oath:—“ I,
 “ *A. B.* sheriff of the city of——do swear, that I will
 “ faithfully and honestly without favour or affection to
 “ any person whatsoever, to the best of my understanding
 “ and power, execute the duties of my said office ; and
 “ particularly that I will without delay duly execute all
 “ writs, process, and executions, and all orders and war-
 “ rants, that shall be delivered to me or lodged in my
 “ office, and make true and speedy returns, to such of
 “ them as are by law returnable, to the courts from
 “ whence they respectively issue ; and that I will take,
 “ or cause to be taken, all inquisitions fairly and openly,
 “ giving such notice as the law requires, and duly return
 “ such inquisitions ; and that I will return and impanel
 “ all jurors, and *tales* jurors, without partiality or favour ;
 “ and that I will do equal justice to poor and rich ; and
 “ that I will not take or receive any fee, reward, or
 “ gratuity whatsoever, for doing or not doing any part of
 “ the duty of my said office, except what I am by law
 “ entitled to receive.” And by s. 6. such sheriff shall in

s. 6.

*Penalty for re-
 fusal or neglect.*

case of neglect or refusal to take said oath forfeit £100.
 (to be recovered as by s. 4.) one moiety to the informer,
 and the other to the use of the infirmary of the city, if
 such

such there be, or if not, then to the infirmary of the county in which such city is situated.

The provision of the 14 Edw. 3. st. 1. c. 7. E. & I. *Their duration in office.* which limited the duration of the office of sheriff to one 14 Edw. 3. st. 1. year, was also contained in the 28 Edw. 3. c. 7. E. & I. c. 7. E. & I. which ordained that they should be removed every year: 28 Edw. 3. c. 7. E. & I. and by the 42 Edw. 3. c. 9. E. & I. no sheriff, under 42 Edw. 3. c. 9. E. & I. sheriff, or sheriff's clerk is to abide in his office above one 1 Ric. 2. c. 11. year. The 1 Ric. 2. c. 11. E. & I. further enacts that E. & I. none that hath been sheriff of any county a year, shall be within the next 3 years chosen again, or put in the same office, if there be other sufficient. The 14 Edw. 3. c. 7. 42 Edw. 3. c. 9. and 1 Ric. 2. c. 11. are enforced 23 Hen. 6. c. 7. E. & I. by the 23 Hen. 6. c. 7. E. & I. and required to be observed in every county, except in such where persons were inheritable to the office of sheriff, or had an estate of freehold in such office: and this act contains other exceptions as to the under sheriffs and other officers within the city of London; and further enacts that if any sheriff or under sheriff or sheriff's clerk shall occupy the office contrary to the said recited statutes, he shall forfeit £200. yearly so long as he so occupies the same: and any liege man may recover said forfeiture by action of debt, in his own name; one moiety thereof to his own use, and the other to the use of the king; and any pardon for such offence shall be void. This act further declares void all patents of said offices for term of years, for life, or in fee; any clause of *non obstante* therein notwithstanding. The 12 Edw. 4. c. 1. E. & I. recites that 12 Edw. 4. c. 1. E. & I. though the king's letters patent for the appointment of sheriffs most commonly bear date the 6th day of November, yet the sheriffs did not get their patents, or take their oaths, until a long time after the end of Michaelmas Term, but yet durst not return any writ or precept after the year that their patents bore date; this statute therefore provides that if the sheriff of any county do execute or return any writ, precept, or warrant, within Michaelmas Term, though after the 6th day of November, if before any writ of discharge shall be delivered to him of his sheriffwick, he shall not be damnified by force of the

23 Hen. 6. c. 7. nor charged with the penalty therein contained, although he hath occupied said office after any of the days of return called *Crastino Martini, Octabis Martini, or Quindena Martini*. And the 17 Edw. 4. c. 7. E. & I.

E. & I. further provides that sheriffs may not only execute and return the writs, precepts, or warrants of the king's courts, but may also do and execute every other thing appertaining to said office, as well during the term of St. Hilary, as of St. Michael, unless previously discharged of said office.

Their incapacity to act as justices of the peace.

1 Mar. st. 2. c. 8. Eng.

7 W. 3. c. 13. s. 3. Ir.

The 1. Mar. st. 2. c. 8. Eng. enacts that no person, sheriff of any county, shall use or exercise the office of justice of the peace, by force of any commission or otherwise, in any county where he shall be sheriff, during the time that he shall exercise said office of sheriff; but every act done by any sheriff by authority of any commission of the peace shall be void. And the 7 W. 3. c. 13. Ir. contains a similar provision (s. 3.) but extends also to sub-sheriffs: and imposes a penalty of £20. on every sheriff or sub-sheriff, who shall act contrary thereto, one moiety to the king, and the other to such person as shall sue for the same by action of debt, &c. in any court of record at Dublin.

Sheriff's expenses restrained

13 & 14 Car. 2. s. 21. Eng.

s. 2.

Sheriff's accounts.

The 13 & 14 Car. 2. c. 21. Eng. enacts, that no sheriff for any county shall, in the time of assizes, keep a table for entertainment of any persons other than those of his own family or retinue; nor shall send in any present to any judges of assize for their provision, nor give any gratuity to their officers or servants; and that no sheriff shall have more than 40 men servants with liveries attending upon him at the time of the assizes, nor under 20 men servants in England, nor under 12 in Wales; upon pain to forfeit £200. But by s. 2. the sheriffs of London and Middlesex and of Westmoreland and of any other city or town are excepted. No Irish act contains any such provisions.

There are many statutes ancient and modern which respect sheriffs as the king's bailiffs, and as such accountable for the king's rents, farms, and casual revenue; these acts contain various minute provisions with regard

regard to the mode of accounting, and as to the fees payable thereon, which do not fall within the scope of this work. To this head are to be referred the 27 Edw. 1. st. 1. c. 2.—1 Hen. 4. c. 11.—4 Hen. 5. c. 2.—34 & 35 Hen. 8. c. 16.—2 & 3 Edw. 6. c. 4.—8 Eliz. c. 16.—21 Jac. 1. c. 5.—13 & 14 Car. 2. c. 21.—3 Geo. 1. c. 15.—32 Geo. 2. c. 14.—and 7 Geo. 3. c. 29. English—and the 7 W. 3. c. 13.—12 Geo. 1. c. 4.—23 Geo. 2. c. 13.—and 32 Geo. 2. c. 14. Irish; but I shall content myself with stating a few only of their provisions. By the

3 Geo. 1. c. 15. s. 3. Eng. and 12 Geo. 1. c. 4. s. 2. & 3. 3 Geo. 1. c. 15. s. 3. Eng. Ir. all sheriffs who shall levy any debts, duties, or money, 12 Geo. 1. c. 4. s. 2. & 3. Ir. (except post fines) due to his majesty, by process directed

to them upon the summons of the pipe or greenwax, or by *levari facias* out of the exchequer, shall have an allowance in their accounts of 12*d.* out of every 20*s.* for any sum not exceeding £100. by them levied, and of 6*d.* for every 20*s.* above the first £100.; and for all debts, &c. (except post fines) due to his majesty, by process or *fieri facias* and extent issuing out of the exchequer, 1*s.* 6*d.* out of every 20*s.* for any sum not exceeding £100.; and 12*d.* for every 10*s.* above the first £100.; provided such sheriff shall duly answer for the same upon his account, by the day on which he ought to be dismissed the court, or in the time to which he shall have a day granted to finish his accounts [*by warrant signed by the chief baron or one

*By the court, in 12 Geo. 1. c. 4. Ir.

of the barons.] These acts also regulate the process to

compel sheriffs to account. By the 3 Geo. 1. c. 15. s. 5. and

3 Geo. 1. c. 15. s. 5. Eng.

12 Geo. 1. c. 4. s. 4. no sheriff or under sheriff shall be

12 Geo. 1. c. 4. s. 4. Ir.

attached for not being apposed on any writ or process, or

for any neglect or contempt relative to his accounts, but

by writ under seal of the exchequer, or by warrant signed

by the chief baron, or in his absence by one of the barons,

and to be executed by the [†marshal] or his deputy, in

†Pursuant in the 12 Geo. 1. c. 4. Ir.

which warrant the name of such sheriff, &c. shall be

inserted, and his offence specified: and the 7 W. 3. c. 13.

Ir. has followed the 21 Jac. 1. c. 5. Eng. in providing

21 Jac. 1. c. 5. Eng.

that every sheriff, who shall pass his accounts and have

7 W. 3. c. 13. Ir.

his *quietus est*, his heirs, &c. shall be discharged of all

sums which he shall have levied or received, though pre-

tended

tended not to be accounted for, unless such sheriff shall be called in question* within 4 years after such account passed and *quietus est* obtained; and every officer who shall sue out any writ or process, or by whose default any writ, &c. shall be sued out, contrary to those acts respectively, shall forfeit £40. together with costs and damages: which penalty is by the English act given to the king and party grieved in equal moieties; but the whole of such forfeiture is according to the 7 W. 3. c. 13. Ir. to be recovered by the party grieved; and this Irish act, s. 2. provides that every such offender who shall be 3 times convicted of such offence, shall be disabled to hold by himself or his deputy any office or employment in any court of justice whatsoever. The 3 Geo. 1. c. 15. s. 6. Eng. and 12 Geo. 1. c. 4. s. 5. Ir. respectively enact, that any officer or other person concerned in the passing sheriff's accounts, who shall wilfully retard or hinder any sheriff in passing his accounts, or by his wilful neglect, absence, or other undue means, prevent any sheriff from being apposed or cast out of court in due time, or after payment of the due fees ascertained by these acts shall neglect to inrol, make out, sign, and deliver his *quietus* in due time, shall make such recompence to the party grieved, as shall be ordered by the barons, upon complaint exhibited to them, in such summary way as they shall think fit.

The statutes which respect sheriffs in their ministerial capacity, and which regulate their fees, and prescribe their duty in the execution of civil process, belong more properly to the 3d division of this work; and those which regard sheriffs as keepers of the king's peace, will fall under consideration in the 4th part, which treats of the criminal law, or of public wrongs and their remedies. The several statutes which prescribe and regulate the duty of sheriffs, when presiding at elections of members of parliament, have been *already stated; but those which relate also to their judicial capacity and to the constitution of their county-courts, are reserved for a subsequent place in this Digest.† I proceed therefore to state those clauses of the several acts which respect sheriff's deputies, and other inferior officers employed by them.

The

* By the 13 & 14 Car. 2. c. 21. s. 8. Eng. judgment must be also given.

3 Geo. 1. c. 15.
s. 6. Eng.
12 Geo. 1. c. 4.
s. 5. Ir.

Ante Chap. 2.

† Book 3.

The 3 Geo. 1. c. 15. s. 10. Eng. and 12 Geo. 1. c. 4. s. 7. Ir. enact, that it shall not be lawful for any person to buy, sell, let, or take to farm the office of under sheriff or deputy sheriff, seal-keeper, county-clerk, shire-clerk, gaoler, bailiff, or other office or place pertaining to the office of high-sheriff of any county; or to contract for, promise, or grant for money or other reward or benefit, any of said offices, or directly or indirectly to give, take, promise, or receive any other consideration for the said offices, upon pain of forfeiting £500. one moiety to the king, and the other to such as shall sue for the same in any court of record at [*Westminster], within 2 years after the offence, by action of debt, &c. But those acts do not extend to hindering sheriffs or sub-sheriffs from taking the lawful fees, nor to prevent the high sheriff from allowing a salary to his under sheriff, or other officers. The 4 Hen. 4. c. 5. E. & I. and the 23 Hen. 6. c. 9. E. & I. also prohibited sheriffs from letting to farm their counties, bailiwicks, hundreds, or wapentakes, and the 4 Hen. 4. c. 5. ordained that sheriffs should abide in person within their bailiwicks and not let the bailiwicks to farm, and be sworn specially to the same.

The provisions of the 42 Edw. 3. c. 9. and the 23 Hen. 6. c. 7. which limit the duration of the office of under sheriff and of sheriff's clerk, as well as of sheriffs, to one year have been already stated; and the 1 Hen. 5. c. 4. E. & I. enacts, that they which be bailiffs of sheriffs by one year, shall be in no such office for 3 years next following, except bailiffs of sheriffs which be inheritable in their sheriffwicks. But the 11 Ann. c. 8. Ir. further provides that no person shall exercise by himself, or any under him or in trust for him or to his use, the office or duty of an under sheriff, sheriff's clerk, or county-clerk, in any county, or county of a city or town, who hath within 3 years next before his admission therein executed any of the said offices within the said county, &c. upon pain of forfeiting £500, one moiety to the use of the work-house or house of correction of such county, &c. and the other to him that will sue for the same in any of the four courts at Dublin by action of debt, &c.; and the judge

Sheriff's offices not to be let to farm.

3 Geo. 1. c. 15. s. 10. Eng.
12 Geo. 1. c. 4. s. 7. Ir.

* Dublin, in
12 Geo. 1. c. 4. Ir.

4 Hen. 4. c. 5.
E. & I.
23 Hen. 6. c. 9.
E. & I.

No person to be sub-sheriff, &c. who has been in office within 3 years before.

42 Edw. 3. c. 9.
E. & I.
23 Hen. 6. c. 7.
E. & I.
1 Hen. 5. c. 4.
E. & I.

11 Ann. c. 8. Ir.

judge or judges of the court where the same shall be brought, shall, upon affidavit made of such offence, oblige the defendant to give sufficient bail to such action, and if judgment be given against such defendant, he shall be for ever incapable of acting as under sheriff, &c. in any county, &c. And the 3 Geo. 2. c. 9. Ir. further enacts that every person who shall act as under sheriff, sheriff's clerk, or county-clerk in trust for any person whom he shall know to have been under sheriff of the same county, or county of a city or town, within 3 years next before, as well as every high sheriff who shall nominate or appoint such person under sheriff, &c. knowing that such person is intended to act in such office in trust for such under sheriff, &c. shall be liable to the penalties of the 11 Ann. c. 8. But the term of 3 years in the 11 Ann. c. 8. is with respect to the city, county of the city and county of Dublin extended to 10 years by the 29 Geo. 2. c. 15. Ir. The penalty of £500. to be forfeited by the sub-sheriffs, &c. of the city and county of Dublin, is to go moiety to the informer and to the work-house of the city of Dublin. And this latter act also provides that any information for any offence against either acts which shall not be prosecuted with effect, shall be deemed invalid, and that any other person may file an information thereupon, and the person bringing such information and not prosecuting the same with effect, shall forfeit £100. to be recovered in a summary way before the justices of either bench, or barons of the exchequer, to the use of the informer and work-house of the city of Dublin.

Subsheriff's oath

3 Geo. 1. c. 15.
s. 19. Eng.

With respect to the oaths to be taken by sub-sheriffs, the 3 Geo. 1. c. 15. s. 19. Eng. prescribes the following oath to be taken by all under sheriffs of counties of South Great Britain, except Wales and the county palatine of Chester, before they enter on the execution of their office, viz. :—" I, *A. B.* do swear that I will well and truly
 " serve the king's majesty in the office of under sheriff
 " of the county of ———— and promote his majesty's profit
 " in all things that belong to the said office, as far as I
 " legally can or may; I will preserve the king's rights

" and

“ and all that [*belongeth] to the crown ; I will not assent
 “ to [†decrease] lessen or conceal the king’s rights, or
 “ the rights of his franchises ; and whensoever I shall
 “ [‡have knowledge] that the rights of the crown are
 “ concealed or withdrawn, be it in lands, rents, fran-
 “ chises, suits, or services, or in any other matter or
 “ thing, I will do my utmost to make them § be restored to
 “ the crown again, and if I may not do it [|| of] myself,
 “ I will certify and inform some of his majesty’s judges
 “ thereof ; I will not respite or delay to levy the king’s
 “ debts for any gift, promise, reward, or favour, where
 “ I may raise the same without great grievance to the
 “ debtors ; I will do right as well to poor as to rich
 “ in all things belonging to my office ; I will do no
 “ wrong to any man, for any gift, reward, or promise,
 “ nor for favour or hatred ; I will disturb no man’s right ;
 “ and will truly and faithfully acquit at the exchequer,
 “ all those of whom I shall receive any debt, duties, or
 “ sums of money belonging to the crown ; I will take
 “ nothing whereby the king may lose or whereby his
 “ right may be disturbed, injured, or delayed ; I will
 “ truly return and truly serve all the king’s writs to the
 “ best of my skill and knowledge ; I will truly set and
 “ return reasonable and due issues of them that be within
 “ my bailiwick, according to their estates and circum-
 “ stances ; and make due pannels of persons able and
 “ sufficient, and not suspected or procured, as is ap-
 “ pointed by the statutes of this realm ; I have not
 “ bought, purchased, or taken to farm, or contracted for,
 “ nor have I promised or given any consideration, nor
 “ will I buy, purchase, or take to farm, or contract for,
 “ promise, or give any consideration whatsoever, by my-
 “ self or any other person for me or for my use, directly
 “ or indirectly, to any person or persons whatsoever, for
 “ the office of under sheriff of the county of——,
 “ which I am now to enter upon and enjoy, nor for the
 “ profits of the same, nor for any bailiwick thereof, or
 “ any other [¶place or office] belonging thereunto ; I
 “ I have not sold [**nor] contracted for, or let to farm, nor
 “ have I granted or promised for reward or benefit by
 “ myself

* *Belongs*, in 12 Geo. 1. c. 4. Ir.

† *Decrease*, omitted in 12 Geo. 1. c. 4. Ir.

‡ *Know*, in 12 Geo. 1. c. 4. Ir.

§ *To*, inserted in 12 Geo. 1. c. 4. Ir.

|| *Of*, omitted in 12 Geo. 1. c. 4. Ir.

¶ These words transposed in 12 Geo. 1. c. 4. Ir.

** *Or*, in 12 Geo. 1. c. 4. Ir.

“ myself or any other person for me or for my use, di-
 “ rectly or indirectly, any bailiwick thereof, or any other
 “ place or office belonging thereunto; I will truly and di-
 “ ligently execute the good laws and statutes of this
 “ [**realm*,] and in all things well and truly behave myself
 “ in my said office, for his Majesty’s advantage, and for
 “ the good of his subjects; and discharge my whole
 “ duty according to the best of my skill and power.—So
 “ help me God.” The oath prescribed for sub-sheriffs
 by the 12 Geo. 1. c. 4. Ir. is in the same form, except as
 to those trivial variations which are noted in the margin.
 This oath is by these statutes respectively required to be
 administered in like manner as the oath prescribed for
 high-sheriffs, which has been already stated. And the
 27 Eliz. c. 12. Eng. and 10 Car. 1. st. 3. c. 18. Ir. also
 enact that every under-sheriff in any shire shall, before
 he intermeddle with the office, take the oath of supremacy
 before the justices of assize, or the *custos rotulorum*, or
 2 justices of the peace (one of the *quorum*) as also the
 following oath:—“ I, *A. B.* shall not use or exercise the
 “ office of under-sheriff corruptly, during the time that
 “ I shall remain therein, neither shall or will accept, re-
 “ ceive, or take by any colour, means, or device what-
 “ soever, or consent to the taking of, any manner of
 “ fee or reward of any person or persons for the im-
 “ panneling or returning of any inquest, jury, or *tales*,
 “ in any court of record for the [†*queen*,] or between party
 “ and party, above 2s. or the value thereof, or such fees
 “ as are allowed and appointed for the same by the laws
 “ and statutes of this realm; but will according to my
 “ power, truly and indifferently, with convenient speed,
 “ impanel all jurors, and return all such writ or writs
 “ touching the same as shall appertain to be done by my
 “ duty or office, during the time that I shall remain in the
 “ said office. So help me God.” And every bailiff of
 franchise, deputy, and clerk of every sheriff and under-
 sheriff, and every other person who shall impanel or
 return any inquest, jury, or *tales*, or intermeddle with
 the execution of process in any court of record, is also
 required to take the said oaths, before the persons above
 appointed

* *Kingdom*, in
 12 Geo. 1. c. 4. Ir.

27 Eliz. c. 12.
 Eng
 10 Car. 1. st. 3.
 c. 18. Ir.

Oath of supre-
 macy to be taken.

Oath against ex-
 action, &c.

† *King*, in
 10 Car. 1.

Before whom
 taken.

appointed, or before the head officer of the place, changing the words "the office of under-sheriff," to words convenient for the office. And if any person so required to take such oath shall impanel or return any inquest, &c. or intermeddle with the execution of process, not having previously taken said oath, he shall forfeit £40. of English money, one moiety to the king, and the other to him that will sue for the same: and by s. 5. if any under-sheriff or other person shall do any thing contrary to the oath aforesaid, he shall forfeit to the party grieved his treble damages to be recovered by action of debt, &c. in any court of record. And the justices of assize, and justices of peace in their sessions, are by s. 6. empowered to hear and determine the defaults contrary to this act, as well by presentment and information, as by indictment; and upon conviction to award execution for said forfeitures by *fieri facias*, or by attachment, *capias*, or *exigent*.

Penalty for neglect,

s. 5.

or breach.

s. 6.

The 11 Ann. c. 8. s. 3. Ir. enacts that every under-sheriff, sheriff's clerk, or county-clerk of any county, county of a city or town, shall before exercising said office, enter into recognizance with sufficient security in the penalty of £200. before a master in chancery, or master extraordinary for taking affidavits in the country, conditioned that he has not taken the said office in trust for any person, who hath been under-sheriff, &c. or executed said office or either of them in the said county, &c. within 3 years then next preceding, and that all the fees perquisites and benefits thereof were to his own use, or to the use of the high-sheriff, and that he will not forbear postpone or delay the execution or return of any writ or process that shall come to his hands, or be lodged in the sheriff's office, for any gratuity, reward, or other consideration; which recognizance shall within 2 months after taking, be returned into the exchequer, for recording of which 2s. 6d. shall be the fee. This act also required an oath to the same effect as the recognizance, which oath was to be administered by the person before whom such recognizance was entered into, but it seems to be doubtful whether this oath was meant to be superseded by the oath prescribed by the 12 Geo. 1. c. 4. Ir.

Recognizance to be entered into by sub-sheriffs &c.

11 Ann. c. 8. s. 3. Ir.

By

*Subsheriff to act
in case of death
of sheriff.*

3 Geo. 1. c. 15.
s. 8. Eng.
12 Geo. 1. c. 4.
s. 6. Ir.

By the 3 Geo. 1. c. 15. s. 8. Eng. and 12. Geo. 1. c. 4. s. 6. Ir. if any sheriff shall die before the expiration of his year, or before he be superseded, the under-sheriff shall nevertheless continue in his office, and execute the same in the name of the deceased, till another sheriff be appointed and sworn; and the under-sheriff shall be answerable for the execution of the office during such interval, as the high-sheriff would have been; and the security given by the under-sheriff and his pledges shall stand a security to the king, and to all persons whatsoever, for the due performing of his office during such interval.

*Sub-sheriffs to
exonerate high
sheriffs.*

23 Geo. 2. c. 13.
Ir.

In order to secure sheriffs against the neglects and defaults of their sub-sheriffs and attornies, the 23 Geo. 2. c. 13. Ir. enacts that where any sub-sheriff or attorney, who shall have received from the high sheriff of any county, county of a city or town, any money in order to be paid over in discharge of the accounts of the high-sheriff, shall neglect or fail to pay over into the treasury the sums so to him entrusted for that purpose, and to procure to be taken off at his own cost and charges, such fines as have been laid on the high-sheriff by reason of such neglect, within 6 months* from the time that such sum shall be so paid, such sub-sheriff or attorney shall for ever after be disabled, to take or execute the office of sub-sheriff of any county or city. And by s. 4. if any such person shall after incurring such disability take upon him the office of sub-sheriff, he shall forfeit £500. one moiety to the king, and the other to the person who shall sue for the same. This act is peculiar to Ireland.

*Penalty for de-
fault.*

s. 4.

*Disabilities of
catholics.*

† *Vide next
chapter.*

1 Geo. 2. c. 20.
s. 4. Ir.

6 Ann. c. 6.
s. 1. & 2. Ir.

By the 25 Car. 2. c. 2. Eng. 1 Geo. 1. st. 2. c. 13. Eng. and 2 Ann. c. 6. Ir. † Catholics are excluded from the office of sheriff in England and Ireland; they are in effect also incapacitated from being sub-sheriffs, by the 27 Eliz. c. 12. Eng. and 10 Car. 1. st. 3. c. 18. Ir. (*ante* page 222). And by the 1 Geo. 2. c. 20. s. 4. Ir. no person shall act as sub-sheriff or sheriff's clerk, who shall not have been a protestant for 5 years immediately before such acting, upon pain of being liable to all the disabilities of professed papists. And by the 6 Ann. c. 6. s. 1. & 2. Ir. no papist

* This time may by s. 3. be enlarged by the court of exc.

papist shall act as clerk in any sheriff's office, upon pain of forfeiting £200, and incurring the other penalties and disabilities in the 2 Ann. c. 6. Ir. The 33 Geo. 3. c. 21. Ir. which repeals in general the disabilities of catholics, upon condition of taking and subscribing the oaths and declarations therein mentioned, does except, amongst others, the disabilities of being sheriffs or sub-sheriffs of counties.

With respect to gaolers. The 14 Edw. 3. st. 1. c. 10. *Sheriffs' gaolers.* E. & I. recites that gaols were wont to be in ward of the sheriffs, and annexed to their bailiwicks, and therefore enacts that sheriffs shall have the custody of the gaols as they were wont to have, and that they shall put in such keepers for whom they will answer. The 13 Ric. 2. st. 1. c. 15. E. & I. also rejoined the king's gaols to the bodies of counties. By the 19 Hen. 7. c. 10. Eng. every sheriff shall have the custody, rule, keeping, and charge, of every of the king's common gaols, prisons, and prisoners in the same, in the county whereof he is sheriff, during the time of his office, except such gaols whereof any person or body has the keeping, of estate of inheritance, or by succession. And this act annulled all patents made for lives and years of the keeping of said gaols, and of the constableships of any castles where such gaols were; but it is provided that neither the sheriff of the county of Surrey, nor any other sheriff, shall have the custody of the gaols of the king's bench and marshalsea. The 11 & 12 W. 3. c. 19. s. 3. & 4. Eng. also declares that sheriffs shall have the charge of gaols, without prejudice however to any person having any gaol by inheritance, for life, or years. The 3 Geo. 3. c. 28. s. 1. Ir. enacts that no sheriff or other person having the power of appointing a gaoler, shall by himself or any person in trust for him take any fee or gratuity, or reserve any rent payable out of any such gaol for such appointment, under the penalty of £500. one moiety to the king, and the other to the informer, to be recovered with full costs of suit by bill, plaint, or information, in any court of record.*

*Vide page 219

Various humane and wise regulations have been made, by several statutes in England and Ireland, with respect to gaols and the treatment of the prisoners therein, as

Rules for regulation of gaols and gaolers.

*Sustenance of
prisoners.*

14 Eliz. c. 5.
Eng.
43 Eliz. c. 2.
Eng.
12 Geo. 2. c. 29.
Eng.
19 Car. 2. c. 4.
Eng.

*Charitable bene-
factions.*

32 Geo. 2. c. 28.
s. 9. & 10. Eng.

14 Geo. 3. c. 59.
Eng.

*The health of
prisoners.*

well as for correcting and restraining the oppressions and exactions of gaolers; of which the following outline will I hope be deemed sufficient:—The 14 Eliz. c. 5. Eng. 43 Eliz. c. 2. Eng. and 12 Geo. 2. c. 29. Eng. enable the justices of peace of every county, city, &c. in their general sessions to rate every parish for the relief and maintenance of poor prisoners in the gaols of such counties, &c. as well as in the king's bench and marshalsea. And the 19 Car. 2. c. 4. Eng. authorizes the justices in their general sessions to provide a stock of materials for setting poor prisoners on work, and to bestow the profits arising from their labour for their relief. And by the 32 Geo. 2. c. 28. s. 9. & 10. Eng. the courts of K. B. C. B. and Exc. justices of assize, (and great sessions) justices of the peace, and commissioners for charitable uses, shall from time to time inquire concerning gifts and bequests to poor prisoners; who may send for papers and witnesses, and examine persons upon oath, and order and settle the payment thereof in such easy and expeditious way as they shall think proper; and a table of such benefactions, after every such settling thereof, shall be transmitted to the clerk of the peace, to be registered by him without fee; and another table to the gaoler, to be hung and kept by him in some conspicuous place in his gaol, where the prisoners may have easy resort thereto without fee. And for preserving the health of prisoners the 14 Geo. 3. c. 59. Eng. provides, that justices at the quarter sessions in England and Wales, shall order the walls and cielings of the several cells and wards of the debtors, felons, and other prisoners, to be scraped and white-washed, once a year at the least, and to be regularly washed and kept clean, and supplied with fresh air, by means of hand ventilators or otherwise, and to order 2 rooms in each gaol or prison, one for sick men, and the other for sick women, to which they are immediately to be removed when seized with any disorder; and to order a warm and cold bath, or commodious bathing tubs, in which the prisoners are to be washed, according to the condition in which they shall be at the time, before they shall be suffered to go out of such prisons upon any occasion

casion whatever; and they are further required to appoint an experienced surgeon or apothecary at a stated salary, to attend each gaol and to report to the justices at the quarter sessions the state of the health of the prisoners under his superintendence. And the justices are by s. 2. further authorized to order cloaths to be provided for the prisoners when they shall see occasion, and to prevent prisoners from being kept under ground when it can be done conveniently, and to make such other orders from time to time for restoring or preserving the health of prisoners as they shall think necessary, and to have the courts within their jurisdictions ventilated. And this act, s. 3. provides for defraying the expenses attending the execution of this act out of the respective county rates, or out of the public stock of such cities or places having exclusive jurisdiction, to which such gaols, &c. belong. And any gaoler who shall neglect or disobey the orders of such justices, is hereby liable to be fined at the discretion of the judges of assize, or of the justices in their quarter sessions, upon complaint in a summary way, and to be committed in case of non-payment. And the justices are by s. 1. to order this act to be painted in large and legible characters upon a board, and hung up in some conspicuous part of every gaol and prison. The 13 Geo. 3. c. 58. Eng. authorizes the justices at their quarter sessions, to appoint clergymen to officiate and perform divine service, according to the rites of the church of England, in the several gaols within their jurisdiction; and to ascertain and settle the number of such clergymen, the nature of the religious duties to be performed, and the salaries to be paid them respectively not exceeding £50. a year, which (by s. 2.) are to be paid by the treasurers of the counties, out of the county rates, upon the certificate of the chairman of the quarter sessions. It is a provision of the 22 & 23 Car. 2. c. 20. s. 13. Eng. that sheriffs or gaolers shall not suffer felons, and prisoners for debt, to be lodged together in one room, under pain of forfeiting their offices and treble damages to the party grieved. And the 24 Geo. 2. c. 40. Eng. provides that no gaoler or keeper of any gaol, prison, or house of correction shall sell, lend, use, give away, or suffer spi-

s. 2.

s. 3.

13 Geo. 3. c. 58.
Eng.*Religious duties.*22 & 23 Car. 2.
c. 20. s. 13. Eng.*Felons and
debtors kept se-
parate.*24 Geo. 2. c. 40.
Eng.

*Use of spirituous
liquors prohib-
ed.*

s. 14.

s. 15.

s. 16.

24 Geo. 3. c. 54.
s. 22. Eng.

*Gaming also
prohibited.*

rituous liquors within any gaol, except by the prescription and direction of a regular physician, surgeon, or apothecary, under pain of forfeiting £100. to the king and to such person as shall sue for the same in any court of record at Westminster, or in the court of exchequer in Scotland, by action of debt, &c. and a second conviction for such offence is to be deemed a forfeiture of the office. And by this clause all licenses granted for the retailing of spirituous liquors within any gaol, &c. are declared void. By s. 14. any justice upon information that such liquors are kept and disposed of in any gaol, &c. is empowered to enter and search, or to authorize a peace officer for that purpose, and to seize, stave, and destroy the same. And by s. 15. any person convicted before a justice of the county, &c. upon the oath of one witness of carrying or attempting to carry such liquors into any gaol, &c. contrary to this act, is to be committed to prison, or to the house of correction for any time not exceeding 3 months, unless he shall pay such fine, not exceeding £20. nor less than £10. as such justice shall impose, one moiety to the informer and the other to the use of such gaol, &c. And these 3 clauses are by s. 16. required to be printed or fairly written, and hung up by every gaoler, &c. in one of the most public places of his gaol, &c. and to be renewed from time to time, under a penalty of 40s. upon conviction before a justice, by the oath of one witness or upon the view. By the 24 Geo. 3. c. 54. s. 22. Eng. a penalty of £10. is imposed upon any gaoler, or person in trust for or employed by any gaoler, who shall suffer tippling or gaming in any prison, or shall sell or suffer to be sold any wine, beer, ale, or other liquors, or shall have any beneficial concern in the sale of any liquors or in any tap-house, tap-room or tap, upon conviction before any two justices; one moiety of said penalty, after deducting the charges of recovering the same, to be paid to the informer, and the other to the use of the prisoners confined within such gaol; to be levied by distress, &c. or in case of no sufficient distress, such justices are empowered to commit any such offender to the house of correction for the county

county or place where the offence shall be committed, for any time not exceeding 3 calendar months, unless such penalty and all reasonable charges shall be sooner paid. The 32 Geo. 2. c. 28. Eng. enacts that a table of fees shall be settled, which are to be taken by the keepers of the several gaols in London, Middlesex, Surrey, and other places in England and Wales; and also that proper rules and orders shall be made for the better government of such gaols; and duplicates of such orders and tables of fees as respect the gaols belonging to the courts in Westminster-hall are required to be inrolled in such courts respectively, and duplicates of such orders, &c. as concern the gaols in the other parts of England, are to be transmitted to the respective clerks of the peace, to be by them registered in the rolls of the respective sessions: and such clerks of the peace are thereby required to cause another copy thereof to be hung up in all courts of assize, great sessions, and quarter sessions, and another copy to be transmitted to every gaoler within their respective jurisdictions; and such gaolers are to have the same hung up conspicuously in some public room or place in their several gaols, so that the prisoners may have free resort thereto at seasonable times in the day time. And by s. 7. the courts in Westminster are directed to inquire in every Michaelmas Term, whether such table of fees and such rules and orders were hung up and complied with, and to give notice to the prisoners of the respective prisons belonging to such courts, of the day appointed for such inquiry. And by s. 8. the judges of assize and great sessions are to make the like inquiry upon their circuits, and to supply and redress whatever shall be neglected or transgressed, and to charge also the several grand juries to make inquiries concerning the same. By s. 11. the said courts (or any judge thereof in vacation time) and the judges of assize and justices of great sessions, as also the judges of all inferior courts of record, are authorized and required, upon the petition of any prisoners complaining of any extortion or other abuse by any gaoler, bailiff, or other officer, to determine the same in a summary way, and to make such orders for redressing

32 Geo. 2. c. 28.
s. 5. & 6. Eng.

*Extortion of
gaolers restrain-
ed.*

s. 7.

s. 8.

s. 11.

s. 12.

29 Geo. 3. c. 67.
Eng.*Gaolers to pro-
duce certificate
of compliance
with these acts.*

redressing such abuses, and for making reparation to the parties injured, together with full costs as they shall think just, and enforce obedience thereto, by attachment or otherwise, in like manner as to other orders of said courts. And by s. 12. any gaoler who shall directly or indirectly demand or take any other fee than what shall be allowed by said table, or who shall otherwise offend against this act, shall forfeit £50. (besides the other penalties to which he is liable by the laws in force) to the party grieved to be recovered with treble costs of suit in any court of record at Westminster by action of debt, &c. For the more effectual execution of the laws respecting gaols the 29 Geo. 3. c. 67. Eng. requires every gaoler, at the Michaelmas session in every year, to deliver to the chairman or other magistrate presiding in such court, a certificate, according to a form annexed to this act, subscribed by himself, and verified upon oath, expressing after each of the provisions of the 22 & 23 Car. 2. c. 20.; 24 Geo. 2. c. 40.; 32 Geo. 2. c. 28.; 13 Geo. 3. c. 58.; (14 Geo. 3. c. 20.*); and 14 Geo. 3. c. 59.; which are briefly stated in said form of certificate, whether such provisions are complied with and observed in such gaol or not; which certificate is thereby directed to be read in the presence of the grand jury, and (by s. 2.) to be taken into consideration by the court, who may accordingly make orders and give directions relative to any of the matters contained therein: and if any gaoler shall neglect to deliver such certificate, he shall by s. 3. forfeit £50. or in case of its not being a county-gaol £20. to be recovered by any person who shall sue for the same, &c. in any court of record at Westminster, or court of great sessions in Wales, or the county palatine of Chester.

Gaols of Ireland
17 & 18 Car. 2.
c. 8. Ir.

3 Geo. 2. c. 5. Ir.

*Sustenance of
prisoners.*3 Geo. 3. c. 28.
s. 5. Ir.26 Geo. 3. c. 27.
s. 32. Ir.

By the 17 & 18 Car. 2. c. 8. Ir. as amended by the 3 Geo. 2. c. 5. Ir. provision is made for raising by pre-
sentment a sufficient fund for the relief of poor prisoners,
to be weekly distributed in bread or other necessaries, by
the minister or curate of the parish, amongst such pri-
soners as are not capable of maintaining themselves. The
3 Geo. 3. c. 28. s. 5. Ir. and the 26 Geo. 3. c. 27. s. 32. Ir.
further provide that the clergyman appointed to deliver
out

* Which releases prisoners acquitted, &c. from payment of fees.

out the common or county allowance of bread to the prisoners, shall attend the prison for that purpose 3 days in each week, and shall take care that it is properly distributed according to the wants of the prisoners, and that it is of a good quality and proper weight, as also that it is not more than 48 hours since the same has been baked; and that he shall not suffer the prisoners to commute the allowance by receiving the value in money or otherwise. And for preserving the health of the prisoners, by the 3 Geo. 3. c. 28. s. 5. Ir. a power is also given to such minister or curate* to employ a physician, apothecary, or surgeon, and to provide medicines for such prisoners as shall be afflicted with sickness or stand in need of such medical aid. And by the 26 Geo. 3. c. 27. s. 32. Ir. every room in the prison shall be daily scraped and swept, and washed once a week in summer, and once a month in winter, and twice in every year the inside of each of the rooms and cells of the prison shall be whitewashed, viz. one month before the lent and summer assizes respectively; and sufficient bedsteads, ticken for beds, and blankets shall be provided for such prisoners as are in want of covering, and every prisoner supplied with fresh straw every month; and sufficient fuel shall be provided for the common-hall of every such prison; and in case of sickness such prisoners as are sick shall be separated from them who are in health; and the surgeon or medical assistant is thereby required to attend the former and to supply them with medicine, and also with broth or other necessary sustenance. To promote the cleanliness of prisons and the convenience of prisoners, this act further provides that in every gaol there shall be one (or more) clean and well secured yard, to which the prisoners shall have free access, and that no hogs, horses, cows, or other cattle, or poultry of any kind, shall be kept in the said yard, and that all prisoners shall be admitted at proper times in succession to air themselves in such yards, for at least 2 hours every day, except prisoners under sentence of death, or such persons as are riotous or disorderly, or where there may be sufficient reason.

* In Dublin this power is given to the grand jury by the 26 Geo. 3. c. 27.

s. 22.

reason to apprehend that an escape may be attempted: a bath, and one necessary or more, are thereby also required to be provided in every gaol for the health and convenience of the prisoners. And by s. 22. of this act, one common hall or kitchen, or more, shall be in every prison, and a constant fire kept up therein for 10 hours, in every day from the 29th September to the 25th day of March, from 10 in the morning to 8 in the afternoon, and for 5 hours from the 25th March to the 29th September, viz. from 11 in the forenoon to 5 in the afternoon, to which the prisoners shall have access in rotation.

s. 32.

Internal economy of gaols.

With a view to the internal economy of gaols it is by this act (s. 32.) further provided, that debtors shall be separated from felons and other offenders, and that persons charged with highway robbery, house breaking, murder, or other capital offences, shall not be suffered to have any intercourse with prisoners confined for offences which are not capital; and that men and women

Oppressions and exactions of gaolers restrained.

prisoners of every denomination shall be kept separate. To restrain the oppressions of gaolers, it is provided that no prisoner, even when condemned to death, shall be put into a dungeon or room under ground, unless in consequence of outrageous conduct, or for an attempt to break gaol; and to prevent their exactions, a table of fees is by the direction of this act to be made out by the inspector-general of prisons (and the inspectors of prisons in the county of the city of Dublin) to be laid by them before the court of king's bench, which table when approved is to serve as a general regulation for fees throughout Ireland. These clauses seem to be also calculated as well for preventing the exactions of gaolers, as for preserving order and regularity of conduct in the prisoners, which provide that no tap shall be kept in any prison, and that no gaoler or any person under his authority or appointment, shall directly or indirectly sell to prisoners any malt or spirituous liquors or any manner of provisions; and further that no spirituous liquors shall be admitted into any prison, unless by a written order from the physician, surgeon, apothecary, medical assistant or inspector, nor any penny-pot or garnish be taken from prisoners

Use of liquors prohibited.

prisoners on their entrance into prison on any pretence whatsoever. In order to insure the observance of these several regulations, it is provided that every gaoler shall reside in his prison, and that he shall not be an under-sheriff or a bailiff, and that he shall not hold any office or employment that may require his attendance in any other place. And females are declared incapable of being gaolers or keepers of gaols. The several local inspectors of prisons are required to visit the gaols under their inspection, twice at least in every week, and at each visit to go into every room in the prisons, and if any complaint shall be made by the prisoners against the gaolers or their agents, to inquire into the particulars of such complaints and to report accordingly. It is likewise a part of their duty to report the state of the prisons under their inspection, to the magistrates at the quarter-sessions, and likewise to the judges at the lent and summer assizes, and also to transmit, 21 days before the sitting of parliament, a similar report together with a calendar of the prisoners actually in custody, setting forth the particular crime for which each prisoner has been committed, and likewise a general statement of all prisoners who have been tried, whether acquitted or condemned, specifying the several crimes of which they were accused, and the sentences of those who may have been found guilty, to the inspector-general of prisons, to be laid by him before both houses of parliament on the first days of each sessions. These local inspectors are to be appointed by the several grand juries, but the clergymen who distribute the bread, &c. are to be preferred, and next to them the attending surgeons or physicians, and in case of their refusal, then some fit person resident within one mile of every such gaol; but the inspector-general of prisons is to be appointed by the lord lieutenant: and by the 27 Geo. 3. c. 39. s. 6. Ir. may be continued in such office as long as the chief governor shall think fit. But in addition to placing gaolers under the inspection of these visitors, some of the above duties and regulations are enforced by particular penalties: thus by the 17 & 18 Geo. 3. c. 28. Ir. which empowers the justices

Gaoler to be resident.

Females incapable of being gaolers.

Duty of inspectors.

27 Geo. 3. c. 39. s. 6. Ir.

17 & 18 Geo. 3. c. 28. Ir.

Duties of gaolers, &c. enforced by divers penalties.

at

at the quarter sessions to make such orders as they shall think fit in respect to ventilating and cleaning the gaols, providing baths and separate rooms for the sick, and cloaths for the prisoners when occasion requires, &c.* also authorizes the judges of assize and the justices at their quarter sessions, upon complaint made in a summary way, to punish any gaoler who shall neglect or disobey such orders of the justices, by fine, and imprisonment in case of non-payment. And the 3 Geo. 3. c. 28. s. 6. Ir. which prohibits hogs, cows, or other cattle to be kept in gaols or the yards or houses adjoining thereto, inflicts a penalty of 40s. upon gaolers for each day every such hog, &c. shall be kept therein. And by s. 4. any gaoler who shall brew or bake in the gaol or in the houses appointed for the use of prisoners, or who shall in any place brew or bake for sale, or keep any shop for the selling of bread, beer, ale or other liquors, incurs a penalty of £5. And this act (s. 2. & 3.) imposes a penalty of 40s. upon any gaoler who shall exact more than the legal fees and charges, which were to be settled and regulated in pursuance of this act, or who shall be guilty of any default or neglect in posting up in the most public place of his gaol, and likewise in the court and session-houses, and in the grand jury room at every assizes and sessions the table of such fees and other charges; such penalties to be recovered by civil bill to the use of the informer.

By the 23 & 24 Geo. 3. c. 41. s. 11. Ir. any gaoler who shall by himself or others in trust for him, sell beer, wine, ale, or spirituous liquors to the prisoners by wholesale or retail, shall forfeit £50. to be recovered before the judge of assize (or recorder in Dublin) one moiety to the use of the informer and the other to be paid to the foreman of the grand jury, to be expended in providing necessaries for the prisoners. But by the 21 & 22 Geo. 3. c. 42. Ir. the judges of assize and gaol delivery are required to examine in a summary manner into the state of the different gaols and the conduct of the different gaolers, and to make such orders and impose such fines in cases of neglect or misconduct of gaolers as shall seem just; and they are hereby further directed to give the 3 Geo. 3. c. 28. and

* As in 14 Geo. 3. c. 59. Eng. *ante* page 226.

17 & 18 Geo. 3. c. 28. in charge to the grand juries of the several counties and cities in their respective circuits: and by s. 2. & 3. they are empowered, in case of the grand juries neglecting to make such presentments as they are required to do by these acts, to impose such fine not exceeding £500. on such counties or counties of cities as to them shall seem just; such fine to be laid on, applotted, and levied in like manner as other presentments, and to be applied to the repair or enlargement of such gaol or for providing necessary accommodations.

The 11 & 12 W. 3. c. 19. Eng. and 24 Geo. 3. st. 2. *Building of gaols.* c. 54. Eng. authorize justices of the peace, upon the presentment of grand juries at assizes, great sessions, or general gaol delivery, to contract for the building, rebuilding, repairing and enlarging gaols at the expense of the respective counties, to be defrayed out of the county rates. And by the 7 Geo. 3. c. 4. Ir. 23 & 24 Geo. 3. c. 41. Ir. 26 Geo. 3. c. 45. Ir. and 36 Geo. 3. c. 55. Ir. the grand juries of the several counties in Ireland, are authorized to raise such sums upon the respective counties, as shall be necessary for paying the rent of gaols, or for building, rebuilding, repairing, or enlarging gaols or bridewells. The presentment for building new gaols is limited to £1000. at each assizes, by the 39 Geo. 3. c. 55. Ir. By the 6 Geo. 1. c. 10. s. 10. Ir. grand juries *Gaolers' salary.* are also empowered to present any sum not exceeding £10. *per annum* to the gaoler of each county in Ireland.

II. Next as to the office of *coroners*, it is provided § 2. by the 3 Edw. 1. c. 10. E. & I. that through all the shires *Appointment of coroners.* sufficient men shall be chosen to be coroners of the most wise and discreet knights, best skilled and willing and able to attend to such office; and that such shall lawfully attach, and present pleas of the crown. This act also directs that sheriffs shall have counter-rolls with the coroners, as well of appeals, as of inquests of attachments or of other things which belong to said office. And by the 14 *14 Edw. 3. c. 8. E. & I.* Edw. 3. c. 8. E. & I. no coroner shall be chosen, unless he have land in fee in the county, sufficient to answer all people. The 28 Edw. 3. c. 6. E. & I. also ordains that *28 Edw. 3. c. 6. E. & I.* all coroners of counties shall be chosen in the full counties by the commons of the same, of the most meet and

most

most lawful people that shall be found in the said counties, to execute the said office, saving to the king and other lords which ought to make such coroners their seigniories and franchises.

Their duties.

4 Edw. 1. st. 2.
E. & I.

The several duties of coroners are particularly enumerated by the statute *de officio coronatoris* 4 Edw. 1. st. 2. E. & I. which directs that the coroner shall go upon the information of bailiffs or other honest men of the county, to the places where any are killed, or suddenly dead, or wounded, where houses are broken, or treasure is found, and shall forthwith command four, five, or six of the next towns to appear before him in such a place, and there to inquire upon their oaths, whether they know where the person was killed, whether in a house, field, bed, tavern, or in company, and who that company were, likewise who were guilty of the act or of the force, and who were present, whether men or women, and of what age they were, whether they could speak or had discretion, that those that be found guilty by the inquisition in this manner be taken and delivered to the sheriff and committed to gaol, and those that be discovered but not found guilty be attached until the coming of the justices, and their names be written in rolls. If any man be slain suddenly who is found in the fields or in the woods, first it is to be seen whether he were slain in the same place or not, and if he were brought there they shall do as much as they can to follow their steps that brought him. It shall be inquired also if the dead person be known, and where he lay the night before, and if any be found guilty of the murder, the coroner shall immediately go to his house, and inquire what goods he hath, and what corn in his grange; and if he be a freeman he shall inquire how much land he hath, and what it is worth yearly, and what crop he hath upon the ground; and shall cause the land, corn, and goods to be valued as if for sale, and delivered to the township, which shall be answerable for them before the justices; and the lands shall remain in the king's hands until the lords of the fee have made fine for it; and these things being inquired the body shall be buried. And by s. 2. it is in like manner to be inquired of them that be drowned, or suddenly slain, whether they

they were drowned, slain, or strangled, by the sign of the cord about their necks or other parts, or any other hurt found upon their bodies, and if any such person be not slain, the coroner shall yet attach the finder and all other in the company. By this section of the act the coroner is also directed to inquire of treasure found, who were the finders, and who is suspected thereof (which may be well perceived when one liveth riotously, haunting taverns, and hath done so of long time) and thereupon he may be attached for this suspicion by 4 or 6 or more pledges. Further if any be appealed of rape, he must be attached if the appeal be fresh, and they see an apparent sign by effusion of blood or an opening made, and such shall be attached by 4 or 6 pledges if they be found, but if the appeal were without any manifest sign, 2 pledges shall be sufficient. Upon appeal of wounds, especially if the wounds be mortal, the parties appealed shall be taken, and kept until it be known whether he that is hurt shall recover or not; and if he die the defendants shall be kept; and if he recover they shall be kept by 4 or 6 pledges, if it be of a maim he shall find more than 4 pledges, if it be of a small wound 2 pledges shall suffice; also all wounds ought to be viewed, the length, breadth, and depth, and with what weapons, and in what part of the body the wound is, and how many be guilty, and how many wounds there be, and who gave them; all which things shall be inrolled in the roll of the coroners: moreover, if any be appealed as principal, they that be appealed of the force shall be attached also, and kept until the principal be attainted. Concerning horses, boats, carts and mills, whereby any are slain, that are properly called deodands (bani) they shall be delivered unto the townships as aforesaid. Concerning wreck of the sea, if any lay hand on it he shall be attached by pledges, and the wreck shall be valued and delivered to the towns. Hue and cry shall be raised in all cases of murder, burglary, or of men slain or in peril of death, as was the custom; and all that shall not follow the hue and cry as near as can be, shall be attached to be before the justices of gaol delivery. The 3 Hen. 7.

3 Hen. 7. c. 1.
E. & I.

c. 1. E. & I. also enacts, that where any person is slain or murdered, and the murderer escaped, the township where the deed was done shall be amerced, and the coroners shall inquire thereof upon view of the body; and after the felony found the coroners shall deliver their inquisitions before the justices of the next gaol delivery for the shire where the inquisition was taken; and that for any default in these respects the coroner shall forfeit to the

1 & 2 Ph. & Mar.
c. 13. s. 5. Eng.
10 Car. 1. st. 2.
c. 18. s. 1. Ir.

the king 100s. The 1 & 2 Ph. & Mar. c. 13. s. 5. Eng. requires every coroner upon any inquisition before him found, whereby any person shall be indicted for murder or manslaughter, or as accessory to the same before such murder, &c. committed, to put in writing the effect of the evidence given to the jury before him, being material; and as well justices of the peace as the said coroner are authorized by this act to bind all such by recognizance or obligation, as do declare any thing material to prove the said murder, &c. or the being accessory thereto, to appear at the next general gaol delivery, to be holden within the county, &c. where the trial thereof shall be, then and there to give evidence against the party so indicted; and coroners are also required to certify as well the evidence, as such bonds in writing, together with the inquisition or indictment before them taken and found, at or before the time of such trial; and the said justices shall also certify the bonds before them taken; and any justice or coroner who shall offend against this act, shall be fined at the discretion of such justices of gaol delivery, upon due proof thereof by examination before them.

The 10 Car. 1. st. 2. c. 18. s. 1. Ir. contains a corres-

32 Hen. 6. c. 2.
Ir.

ponding provision. The 32 Hen. 6. c. 2. Ir. recites that coroners, in cases of inquisition upon sight of the bodies of dead men, where the jurors upon their oaths found that they know not the felon, would not take such verdicts, but often vexed them from day to day and from place to place, to the intent to charge the people with the escapes; and therefore enacts that where the jury shall upon their oaths say that they know not the felon, the coroners shall give them another reasonable day, and if at said day they find the same verdict, then the coroners shall discharge

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the said people; and there shall be no *habeas corpus* for the same jurors, nor any special *venire* for the same matter.

With respect to the fees of coroners. It was a provision of the 3 Edw. 1. c. 10. E. & I. that no coroner should demand or take any thing of any man in respect to his office, upon pain of great forfeiture to the king. But the 3 Hen. 7. c. 1. E. & I. enacted that the coroner should have for his fee, upon every inquisition taken upon the view of the body slain, 13s. 4d. of the goods and chattels of the slayer or murderer, or if he should have no goods, then out of the amerciaments which should be imposed upon any township for the escape of any such murderer. And the 1 Hen. 8. c. 7. Eng. enacted that upon a request made to a coroner to inquire upon the view of any person slain, drowned, or dead by misadventure, the coroner should upon pain of forfeiting 40s. diligently do his office without taking any fee for the same, and that the justices of assize and justices of the peace should inquire of any default therein, as well by examination as by presentment. But the 25 Geo. 2. c. 29. Eng. recites that the fees provided for coroners by the 3 Hen. 7. c. 1. were not an adequate reward, and therefore enacts that for every inquisition not taken upon the view of a body dying in gaol or prison, which shall be duly taken in England by any coroner in any township or place contributory to the rates directed by the 12 Geo. 2. c. 29., 20s. shall be paid to the coroner out of such rates, by order of the justices at their quarter sessions for such county, &c. and the further sum of 9d. for every mile he shall be compelled to travel from his usual place of abode; and for every inquisition upon the view of a body dying in any gaol, &c. such sum, not exceeding 20s. as the justices at their general quarter sessions shall think fit, shall be in like manner paid; which fees shall be exclusive of the 13s. 4d. to which the coroner is intitled by virtue of the 3 Hen. 7. c. 1.; but any coroner taking more than said fees shall be deemed guilty of extortion.* And this act provides that if any coroner, who is not appointed by virtue of an annual election or nomination, or whose office is not annexed to any other office, shall be

* By s. 5. this act does not extend to London, Durham, &c.

be convicted of extortion, or wilful neglect of his duty, or misdemeanor in his office, the court before whom he shall be so convicted, may adjudge that he shall be amoved from his office, and thereupon, if he shall have been elected by the freeholders of any county, a writ shall issue for the amoving him from his office and electing another coroner in his stead, but if such coroner shall have been appointed by the lord of any liberty or franchise, or in any other manner than by election of the freeholders, then such lord or other person entitled to the appointment of such coroner shall, upon notice of such judgment of removal, appoint another in his stead.

30 Geo. 3. c. 9.
Ir.

The 30 Geo. 3. c. 9. Ir. does not seem to be a general act which authorizes the grand juries of such parts of Ireland, in which they were *then* empowered to present for coroners in lieu of fees, to present for said coroners any sum not exceeding 40 guineas at each assizes, in lieu of fees, and instead of the sums which they were *then* empowered to present.

§ 3.

Justices of the peace—their appointment.

1 Edw. 3. st. 2.
c. 16. E. & I.

III. *Justices of the peace* are the next species of subordinate magistrates. With respect to their appointment the 1 Edw. 3. st. 2. c. 16. E. & I. enacts, that for the better keeping and maintenance of the peace in every county, good men and lawful, which are no maintainers of evil, or barrators in the county, shall be assigned to keep the

4 Edw. 3. c. 2.
E. & I.

18 Edw. 3. st. 2.
c. 2. E. & I.

peace. The 4 Edw. 3. c. 2. E. & I. contains a similar provision. And the 18 Edw. 3. st. 2. c. 2. E. & I. enacts that two or three of the best reputation in the several counties shall be assigned keepers of the peace. And

34 Edw. 3. c. 1.
E. & I.

by the 34 Edw. 3. c. 1. E. & I. in every county of England, there shall be assigned for the keeping of the peace one lord and with him three or four of the most worthy in the county, with some learned in the law; who shall have power to restrain offenders, rioters, and other barrators, and to arrest and punish them according to their trespass or offence, and to cause them to be imprisoned, and duly punished according to the law and customs of the realm; and also to inquire of those that have been pillors and robbers in parts beyond the sea, and go wandering about and will not labour; and to take and arrest all that they

they find by indictment or by suspicion and put them in prison, and to take of such as be not of good fame, sufficient surety and mainprize for their good behaviour toward the king and his people; and the others duly to punish to the intent that the people, merchants, or others, may not be troubled or endamaged by such rioters and rebels: and also to hear and determine at the king's suit all manner of felonies and trespasses done in the same county, according to the laws and customs of the realm. The 18 Edw. 3. (*supra*) had also previously provided, that when need should be, the keepers of the peace should, with other wise and learned in the law, be assigned by the king's commission, to hear and determine *felonies* and trespasses done against the peace in said counties, and to inflict reasonable punishments. By the 2 Hen. 5. st. 2. c. 1. E. & I. the justices of the peace shall be made by the king's commission, by the advice of the chancellor and the king's council, of the most sufficient persons dwelling in the same counties, without taking other persons dwelling in foreign counties, to execute such office, (except the lords and justices of assizes, and the king's chief stewards of the duchy of Lancaster).

The number of justices of the peace in each county, which was limited by the 18 Edw. 3. st. 2. c. 2. and 34 Edw. 3. c. 1. in the manner above-mentioned, was increased to six by the 12 Ric. 2. c. 10. E. & I. and afterwards to eight by the 14 Ric. 2. c. 11. E. & I. And with respect to their qualification, the 13 Ric. 2. st. 1. c. 7. E. & I. required that they should be made of the most sufficient knights, esquires, and gentlemen of the law, of the respective counties. The 2 Hen. 5. st. 2. c. 1. E. & I. also required residence as a qualification, having enacted, that justices of the peace shall be made of the most sufficient persons, dwelling in the same counties, by the advice of the chancellor and of the king's council. And it was provided by the 18 Hen. 6. c. 11. E. & I. that no justice of the peace should be assigned, if he had not land to the value of £20 by the year; and that if any such be assigned who should not have land, &c. to that value, he should inform the chancellor of England, who should

s. 2.

5 Geo. 2. c. 18.

Eng.

18 Geo. 2. c. 20.

Eng.

accordingly put another in his place; and if he should not give such information within a month after having notice of such commission, or if he should sit or make any warrant by force of such commission, he should incur the penalty of £20 and be put out of the commission; one half of such penalty to the king, and the other to him that would sue for the same, to be recovered by writ of debt. But by s. 2. this ordinance was not to extend to cities, towns, or boroughs, which were counties incorporate of themselves, and which had justices of the peace dwelling within the same. And this act provided, that if there were not sufficient men learned in the law having lands &c. to the value aforesaid, and within any county, the chancellor should have power to put other discreet persons learned in the law in such commissions, though they had not lands &c. to such value. But the 5 Geo. 2. c. 18. Eng. (as amended by the 18 Geo. 2. c. 20. Eng.) enacts that no person shall be capable of being a justice of the peace for any county, who shall not have either in law or equity to his own use in possession, a freehold, copyhold or customary estate, for life, or for some greater estate, or an estate for years determinable upon one or more lives, or for a term originally created for 21 years or more, in lands lying in England or Wales, of the yearly value of £100, over all incumbrances, and above all rents and charges payable out of the same; or who shall not be seised of or entitled unto, in law or equity to his own use, the immediate reversion or remainder in lands, &c. lying as aforesaid, which are leased for 1, 2, or 3 lives, or for years determinable upon 1, 2, or 3 lives, upon reserved rents, and which are of the clear yearly value of £300; and who shall not before he takes upon himself to act as a justice of the peace, at some general or quarter sessions for the county, &c. for which he intends to act, first take and subscribe the following oath, viz.

Oath of qualification.

“ I, *A. B.* do swear that I truly and *bona fide* have
 “ such an estate in law or equity, to and for my own
 “ use and benefit, consisting of———(*specifying the*
 “ *nature of such estate, whether messuage, land, rent,*
 “ *tithe,*

*“tithe, office, benefice or what else) as doth qualify me to act
“as a justice of the peace for the county, riding, or
“division of——according to the true intent and
“meaning of an act of parliament, made in the 18th
“year of the reign of his majesty king George the se-
“cond, intituled, “an act to amend and render more ef-
“fectual an act passed in the 5th year of his present ma-
“jesty’s reign, intituled, “an act for the further quali-
“fication of justices of the peace.” And that the same
“(except where it consists of an office, benefice, or eccle-
“siastical preferment, which it shall be sufficient to ascer-
“tain by their known and usual names) is lying or
“being, or issuing out of lands, tenements, or heredita-
“ments, being within the parish, township, or precinct
“of——or in the several parishes, townships, or pre-
“cincts of——in the county of——or in the se-
“veral counties of——(as the case may be)” which
oath shall be kept by the clerk of the peace amongst
the records of the sessions; and such clerk of the peace
shall upon demand deliver an attested copy thereof
(fee 2s.); which being proved to be a true copy of such
oath, shall be evidence thereof in any action or infor-
mation brought upon this act.—And by s. 3. any per-
son who shall act as a justice, &c. without having taken
and subscribed said oath, shall for every such offence
forfeit £100—one moiety to the use of the poor of the
parish in which he usually resides, and the other to the
use of such person as shall sue for the same, to be re-
covered with costs by action of debt, &c. in any court
of record at Westminster; and in every such action the
proof of his qualification shall lie on such person against
whom such action is brought. By s. 4. if the defendant
in any such action intend to insist upon any lands,
&c. not contained in such oath, as his qualification to
act at the time of the supposed offence, he shall, at or
before the time of his pleading, deliver to the plaintiff
or informer or his attorney, a notice in writing, spe-
cifying such lands, &c. (other than those contained in
the oath,) and the parish, township, precinct, or place,
and the county wherein the same are, (offices and bene-*

s. 3.

s. 4.

s. 5.

s. 6.

s. 7.

Actions for penalties and their incidents.

s. 8.

s. 9.

s. 10.

s. 11.

fices excepted, which it shall be sufficient to ascertain by their usual names) and if the plaintiff, &c. shall thereupon not proceed any further, he may with the leave of the court discontinue any such action, &c. on payment of such costs as the court shall award: but by s. 5. upon the trial of the issue in any such action, &c. no lands, &c. not contained in such oath and notice, or one of them, shall be allowed to be insisted on by the defendant as a part of his qualification. By s. 6. when the lands contained in the said oath or notice are together with other lands, &c. belonging to the person taking such oath, or delivering such notice, liable to any charges, rents, or incumbrances, the lands, &c. contained in said oath or notice, shall be deemed chargeable only so far as the other lands, &c. so jointly charged are not sufficient to pay the same: and by s. 7. when the qualification or any part thereof consists of rents, it shall be sufficient to specify in such oath or notice, so much of the lands, &c. out of which such rent is issuing, as shall be of sufficient value to answer such rent. By s. 8. in case the plaintiff or informer shall discontinue, or be nonsuited, or judgment be given against him, the person against whom such action, &c. is brought, shall recover treble costs. By s. 9. only one penalty of £100 shall be recovered from the same person by virtue of these acts, for the same or any other offence committed by such person, before the bringing of the action, &c. upon which such penalty shall have been recovered, and due notice given to the defendant of the commencement of such action, &c. And by s. 10. when an action, &c. is brought and due notice given thereof, no proceedings shall be had upon any subsequent action, &c. against the same person, for any offence committed before the time of giving such notice, but the court where such subsequent action, &c. is brought, may, upon the defendant's motion, stay proceedings therein, so as such first action be prosecuted with effect and without fraud; but no action, &c. not so prosecuted, shall be deemed an action, &c. within the meaning of this act. By s. 11. every action, &c. given by these acts, shall be commenced within 6 calendar months

months after the fact upon which the same is grounded has been committed. But by s. 12. this act shall not extend to cities or towns, being counties of themselves, or to any other city, &c. having justices of the peace within its respective limits, by charter, commission, or otherwise. And by s. 13. nothing in this act, or in the 5 Geo. 2. c. 18. shall extend to any peer or lord of parliament, or to the lords or others of the privy council, or to the justices of either bench, or barons of the exchequer, or to the attorney or solicitor general, or to the justices of great sessions for Chester and the counties of Wales, or to the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified to serve as a knight of a shire by 9 Ann, c. 5. And by s. 14. these acts shall not extend to incapacitate the officers of the board of green cloth, the commissioners and principal officers of the navy, or the 2 under secretaries in each of the offices of the principal secretary of state, or the secretary of Chelsea college, from being justices of the peace for such counties or places where they usually have been justices of the peace. And by s. 15. this act is also declared not to extend to the heads of colleges or halls in Oxford and Cambridge, or to the vice chancellor of either of the universities, or to the mayor of Oxford or Cambridge. The 23 and 24 Geo. 3. c. 30. Ir. contained similar provisions; but this Irish statute, which was explained and amended by the 25 Geo. 3. c. 59. was afterwards repealed by the 27 Geo. 3. c. 40. Ir. The 23 and 24 Geo. 3. was a temporary statute, and the 27 Geo 3. was, as to some of its provisions, also temporary, but has been since continued to the year 1811, &c. by the 44 Geo. 3. c. 90. I. So that the 18 Hen. 6. c. 11.* is the only statute in force, which prescribes the qualification as to property for justices of peace in Ireland.

s. 12.

s. 13.

s. 14.

s. 15.

*Ante page 241.

Justices of peace were expressly required to take the oath of allegiance by the 7 Jac. 1. c. 6. Eng. and the oath of supremacy by the 1 Eliz. c. 1. Eng.; and they were of course included amongst those who were required by the 13 W. 3. c. 6. Eng. to take the oath of abjuration,

Oaths of allegiance, &c. to be taken.

abjuration, and by the 25 Car. 2. c. 2. Eng. to make the declaration against transubstantiation, and receive the sacrament according to the usage of the church of England, as a qualification for bearing civil offices. And by this last mentioned statute, and the 1 Geo. 1. st. 2. c. 13. Eng. (which amends the several other acts, and is itself amended by subsequent statutes) justices of peace in England are still bound to qualify themselves for holding this office by taking these several oaths, &c. In Ireland the same qualifications for this and other civil offices are required by the 2 Ann, c. 6. Ir.* And the 7 Geo. 2. c. 6. Ir. enacts, that no person converted from the Popish to the Protestant religion, shall be capable of being or acting as a justice of peace whose wife shall be a papist, or who doth educate in the Popish religion, any of his children who shall be under the age of 16 years, on pain of one year's imprisonment, and of forfeiting £100, one moiety to the king, and the other to any person suing for the same, to be recovered by bill, &c. in any court of record; and such person on conviction shall be incapable of being an executor, administrator, or guardian. Catholics and other non-conformists were therefore in effect excluded by these statutes from being justices of peace in England or Ireland: But these disabilities have been removed or relaxed in respect to Protestant dissenters in Ireland by the 19 & 20 Geo. 3. c. 6. Ir. and in respect to Irish catholics by the 33 Geo. 3. c. 21. Ir. which several statutes will come more particularly under consideration in the next chapter.

§ Vide Burn's
Justice.

† within

† of

|| with any per-
son in

The oath of office administered to justices in England[§] is in the following words: "Ye shall swear that as justice of
"the peace [† in] the county of ———, in all articles
" [† in] the king's commission to you directed, you shall
" do equal right to the poor and to the rich, after your
" cunning, wit and power, and after the laws and cus-
" toms of the realm, and statutes thereof made; and
" ye shall not be of counsel [|| of] any quarrel hanging
" before you; and that ye hold your sessions after the
" form of the statutes thereof made; and the issues, fines,
" and amerciaments that shall happen to be made, and
" all

* The oath of abjuration is not annexed to the *dedimus* in Ireland, which seems to be incorrect.

“all forfeitures that shall fall before you, ye shall
 “cause to be entered without any concealment or em-
 “bezzlement, and truly send them to the king’s exche-
 “quer; ye shall not let, for gift or any other cause, but
 “well and truly ye shall do your office of justice of the
 “peace in that behalf; and that you take nothing for
 “your office of justice of the peace to be done, but of
 “the king, and fees accustomed, and costs limited by††^{the}
 “statute; and ye shall not direct, nor cause to be directed,
 “any warrant by you to be made, to the parties, but
 “ye shall direct them to the bailiffs of the said county,
 “or other the king’s officers or ministers, or other in-
 “different persons, to do execution thereof. So help you
 “God.” This oath, with a few trivial variations, which
 are noted in the margin, corresponds with the form of
 oath administered to justices in Ireland. No statute pre-
 scribes this form of oath; but the 13 Ric. 2. st. 1. c. 7. 13 Ric. 2. st. 1.
 E. & I. enacts, that the justices shall be sworn duly and c. 7. E. & I.
 without favour, to keep and put in execution all the sta-
 tutes and ordinances touching their offices. The form
 of the commission for justices of the peace is nearly
 similar in England and Ireland.

The 26 Geo. 2. c. 27. Eng. recites, that authority was given *Justices of the*
 by divers acts of parliament, to 2 or more justices of the *quorum.*
 peace, whereof one or more were to be of the *quorum*; 26 Geo. 2. c. 27.
 and enacts, that no act, order, adjudication, warrant, Eng.
 indenture of apprenticeship, or other instrument, made
 or executed by 2 or more justices of the peace, which doth
 not express that one or more of such justices is or are
 of the *quorum*, shall be impeached for that defect only.
 And the 7 Geo. 3. c. 21. Eng. in like manner provides 7 Geo. 3. c. 21.
 in respect to cities, boroughs, towns corporate, franchises Eng.
 and liberties, that all acts, orders, &c. which shall be made
 done or executed by virtue of any act of parliament,
 by two or more justices qualified to act within such ci-
 ties, &c. though neither of such justices be of the *quorum*,
 shall be as valid and effectual as if one of the said jus-
 tices had been of the *quorum*. These statutes are pe-
 culiar to England.

By the 5 Geo. 2. c. 18. s. 2. Eng. attornies, solici- *Attornies, &c.*
 tors, and proctors, are incapacitated from being justices of *incapacitated to*
 the *be justices.*
 5 Geo. 2. c. 18.
 s. 2. Eng.

s. 3.

the peace in England or Wales, during such time as they shall continue in practice. And by s. 3. any person who shall not be qualified according to this act, and shall take upon himself to act as a justice of the peace, shall forfeit £100 for every such offence, one moiety to the king, and the other to such as shall sue for the same, by

2 Geo. 1. c. 11.
s. 12. Ir.

action of debt, &c. at Westminster. The 2 Geo. 1. c. 11. s. 12. Ir. prohibits attornies from practising in any causes for the recovery of small debts in a summary way, (i. e. by civil bill) in any county where they shall be justices of peace: but no Irish statute contains any such general provision as that of the 5 Geo. 2. above mentioned.

Commissions not
determined by
death of king.

7 & 8 W. 3.
c. 27. s. 21. Eng.
1 Ann. st. 1.
c. 8. Eng.

By virtue of the 7 & 8 W. 3. c. 27. s. 21. Eng. as explained by the 1 Ann. st. 1. c. 8. Eng. commissions of the peace continue in force until 6 months after the demise of the king: the latter of these statutes having enacted, (s. 2.) that no patent or grant of any office or employment, civil or military, shall cease or be void, by reason of the death or demise of the king, but that every such patent, &c. shall be in force for 6 months after such demise, unless in the mean time superseded, determined, or made void by the next successor. This

21 & 22 Geo. 3.
c. 48. s. 3. Ir.
1 Geo. 3. c. 13.
s. 1. Eng.
7 Geo. 3. c. 9.
Eng.

act was by s. 6. declared to extend to Ireland; and has been recognized by the 21 & 22 Geo. 3. c. 48. Ir.

The 1 Geo. 3. c. 13. s. 1. Eng. as explained by the 7 Geo. 3.

c. 9. Eng. enacts, that all persons who have been or shall be appointed justices of the peace, by any commission granted by his present majesty, or any of his successors, and who shall take the oath of office of a justice, for any county, &c. before the clerk of the peace of such county, &c. or his deputy, and who shall have taken and subscribed at some general or quarter sessions of the peace, the oath prescribed by the 18 Geo. 2. (*ante* page 242) shall not be obliged, during the reign in which such oath shall have been so taken, to take and subscribe again said oath, by reason of such person being again appointed a justice by any commission during such reign, and shall not incur any penalty or forfeiture for the not taking or subscribing the said oath. And by the 1 Geo. 3. c. 13. s. 2. no person who

1 Geo. 3. c. 13.
s. 2. Eng.

hath

hath taken or shall take the usual oaths under a writ or commission of *dedimus potestatem*, shall be obliged to sue out any other *dedimus*, to authorize any person therein named to administer again to any such justice, on any new commission of the peace being issued, the oaths usually annexed to such *dedimus*; but the clerk of the peace or his deputy of every county, &c. for which any such justice hath acted and qualified, or before the issuing of any such new commission of the peace shall act and qualify, shall, on every such new commission of the peace being issued, prepare a parchment roll with the oaths, annexed to and usually taken under said writ or commission, ingrossed in such roll, and shall administer, without fee, the said oaths to every such justice, and such justice shall subscribe his name on said parchment roll, and the said roll shall be kept by the respective clerks of the peace amongst the records of the sessions. By the 7 Geo. 3. c. 16. s. 4. & 6. Ir. no justice of peace who shall have taken the oaths, &c. shall be obliged to qualify again on any subsequent commission during the same reign, unless left out of some renewed commission, and afterwards inserted in one for the same place.

The clause of the 1 Edw. 6. c. 7. s. 4. Eng. which was expressly adopted or followed by the 10 Car. 1. st. 2. c. 14. Ir. enacts, that albeit any person being (justice of assize or gaol delivery or) justice of peace within any of the king's dominions, or being in any other of the king's commissions, shall be made or created duke, archbishop, marquis, earl, viscount, baron, bishop, knight, justice of the one bench or the other, serjeant at law, (or sheriff) yet he shall remain justice and commissioner, and have full power to execute the same: but this clause, so far as it extended to authorize sheriffs to act as justices, was altered by the 1 Mar. st. 2. c. 8. Eng. and 7 W. 3. c. 13. Ir. which respectively prohibit sheriffs from exercising the office of justices in the counties of which they shall be sheriffs, as already stated *ante*-page 216.

Commission not superseded by being created duke, &c.
1 Edw. 6. c. 7. s. 4. Eng.
10 Car. 1. st. 2. c. 14. Ir.

As in most corporation towns, there are quarter sessions kept before justices of their own, within their respective limits,* the 2. & 3. Ph. & M. c. 18. Eng. may be

2 & 3 Ph. & M. c. 18. Eng.

* Blackstone's Comment. vol. 4. p. 272.

Commission of the peace for a county not a supersedeas to one for a town corporate.

be here stated, which provides, that any commission of the peace and of gaol delivery granted to any city or town corporate not being a county in itself, shall stand good and effectual in law, notwithstanding the granting of any like commission for the conservation of the peace, or delivery of the prisoners in the gaol of any shire, bearing date after the said other commission.

Fees of justices.

12 Ric. 2. c. 10. E. & I.

The fees of justices of the peace in England are ascertained in many cases by several statutes imposing particular duties upon them. And by the 12 Ric. 2. c. 10. E. & I. they were allowed 4s. the day for the time of their session, and their clerks 2s. out of the fines and amerciaments of the same sessions, by the hands of the sheriffs. The

26 Geo. 2. c. 14. Eng.

Fees of the clerks of justices

26 Geo. 2. c. 14. Eng. required the justices of the peace throughout England, at their respective general quarter sessions to be held next after the 24th June, 1753, to make and settle a table of fees to be taken by their clerks, which was to be laid before the judges at the next assizes or great sessions for the respective counties, to be ratified by them with such alterations as should appear just and reasonable. And this statute enacts that it shall be lawful for the justices of peace at their respective quarter sessions, from time to time to make any other table of fees, instead of that *then* required to have been made, and after the same shall be approved of at the next general quarter sessions, to lay such new table before the judges at the next assizes or great sessions, who are hereby authorized to ratify the same in such manner as they shall think fit; and no table of fees shall

s. 2. & 4.

be valid until ratified by the said judges. And by s. 2. & 4. if any clerk shall after 3 calendar months from the time that such table of fees shall be so ratified, demand or take any other or greater fee, he shall forfeit £20. to any person who shall sue within 3 months by action of debt, &c.

s. 3.

at Westminster. And by s. 3. the said table of fees shall be deposited with the clerk of the peace, who shall cause true copies thereof to be kept constantly in a conspicuous part of the room where the sessions are held, on pain of forfeiting £10. to be recovered as aforesaid. And by the

27 Geo. 2. c. 26. s. 4. Eng.

27 Geo. 2. c. 16. s. 4. Eng. a like table of fees for Middlesex shall be confirmed by the two lord chief justices, and

and the lord chief baron or any two of them. And in Ireland the 3 Geo. 2. c. 16. Ir. regulates the fees of justices of the peace, and prohibits their clerks from taking such upon any pretence. This statute enacts that no justice of the peace of any county, &c. (other than the justices of the court of K. B.) shall for or in the execution of his office demand or receive any other fees than 6*d.* for each warrant, and 1*s.* for every recognizance; and no fee or reward shall be taken by any justice of the peace for any warrant, recognizance, mittimus, discharge, or other act to be done in the execution of his office; nor (by s. 2.) shall any fee be taken in any case of felony or treason. And by s. 3. if any person shall take any fee or reward on account of his trouble or in respect of his acting as clerk under any justice of the peace, he shall forfeit 40*s.* to the party who shall first give information in writing of any such offence, before any justice of peace, or chief magistrate of any city, &c. to be recovered within a month by civil bill. This act is by s. 5. required to be read in open court at every general Easter quarter sessions by the clerk of the peace or his deputy, on pain of forfeiting 40*s.* to him who shall first sue by civil bill, at the next assizes for such county.

3 Geo. 2. c. 16.
s. 1. Ir.

Fees of justices regulated.

s. 2.

s. 3.

Clerks of justices not to take fees.

s. 5.

Act proclaimed

The statutes which respect the office, duty and power of justices of peace, as well as those which have been passed for their relief against vexatious actions, and for their ease in pleading, will be found in the subsequent parts of this Digest.

IV. With respect to *constables*, it was ordained by the statute of Winchester, 13 Edw. 1. st. 2. c. 6. E. & I. that in every hundred and franchise 2 constables should be chosen to make the view of armour; and who should present before the justices assigned, such defaults as they should see in the country about armour prescribed (by this chapter of the act) for the different classes of men in the community, according to their age and quality of estate; and in respect of making fresh suit and following hue and cry from town to town (as directed by chapter 1. of this statute): and in respect to highways (the breadth of which was regulated by chapter 5): and they

§ 4.

*Constables—
their ancient
duty.*

13 Edw. 1. st. 2.
c. 6. E. & I.

they were thereby also directed to present all such as should lodge strangers in uplandish towns, for whom they would not answer; and by chapter 4 of this statute, watch and ward were directed to be kept, in all cities, boroughs, and towns, and inquiry made by the bailiffs of towns as to any strangers or suspicious persons lodged or received in the suburbs or remote extremities of great towns. And in Ireland, in addition to the provisions of the statute of Winchester which were in force in this kingdom, the 5 Edw. 4. c. 5. Ir. enacted that in every English town of this land, that passed three houses holden by tenants where no other president was, there should be chosen by his neighbours, or by the lord of such town, one constable to be president and governor of said town in all things pertaining to the common rule thereof, as in the ordinance of night watch from Michaelmas to Easter yearly; and it was by this statute the special duty of such constable, to have every man of such town, between the age of 60 and 16, mustered before him or his deputy, at such time as he or his deputy should appoint, and to exercise them in shooting 3 times every feast day between the 1st day of March and last day of July at butts to be provided by such towns for that purpose. The 10 Hen. 7. c. 9. s. 3. Ir. also enacted that there should be in every parish, constables of able persons inhabitants within said parishes, who should call before them on every holyday the parishioners having bows and arrows, to shoot two or three games at the butts, in order that they should sooner attain the practice and experience of archers.

5 Edw. 4. c. 5. Ir.

Ancient duty of constables in Ireland.

10 Hen. 7. c. 9. s. 3. Ir.

Made of appointing constables—and duration of their office.

13 & 14 Car. 2. c. 12. s. 15. Eng.

As to the mode of appointing constables, the 13 & 14 Car. 2. c. 12. s. 15. Eng. recites that the laws and statutes for the apprehending of rogues and vagabonds have not been duly executed, sometimes for want of officers by reason lords of manors do not keep court leets every year for the making of them; and therefore enacts, that in case any constable, headborough, or tithingman shall die, or go out of the parish, any 2 justices of the peace may make and swear a new constable, &c. until the said lord shall hold a court, or until the next quarter sessions, who shall

shall approve of the said officer, or appoint another as they shall think fit. And if any officer shall continue above a year in his office, then the justices in their quarter sessions may discharge such officer, and put another in his place, until the lord of the manor shall hold a court as aforesaid. The 7 Geo. 2. c. 12. s. 3. Ir. enacts 7 Geo. 2. c. 12. s. 3. Ir. that every high constable for any barony in any county (except the county and city of Dublin) shall be appointed High constables of Ireland. by a presentment of the grand jury of such county, at the general assizes held for the same, to be confirmed by the court, and not at any quarter sessions; and such high constable shall continue in his office for one year, unless sooner removed by the presentment of a grand jury, to be confirmed as aforesaid; and shall at the expiration of one year be discharged from said office, provided he has duly accounted for the public money which came to his hands, and shall produce to the grand jury at the assizes, an authentic discharge for the same under the hand of the treasurer of such county. And by the 23 Geo. 2. c. 14. s. 3. Ir. every person who shall 23 Geo. 2. c. 14. s. 3. Ir. serve one year in the office of high constable, and shall have accounted for the public money, and be legally discharged, shall not be compelled by any grand jury to serve again for 7 years. The 36 Geo. 3. c. 55. s. 28. Ir. 36 Geo. 3. c. 55. s. 28. Ir. enacts, that the grand jury of every county in Ireland, shall at the spring assizes in every year, appoint a high constable for each barony or half barony in such county, for which high constables had been theretofore appointed.

The 23 Geo. 2. c. 14. s. 1. Ir. also provides, that if any seneschal of a manor shall neglect to hold his leet, at the time when the same ought to be held for appointing petty constables, or such leet being held, shall neglect to appoint petty constables, and if the sheriff of any county having the appointment of petty constables in his torn shall neglect to hold his torn, at the time when the same ought to be held for appointing such constables, or such torn being held, there shall be a neglect in appointing such petty constables, or if from any other cause no petty constable shall be duly appointed for any district at the proper time, the justices of the peace for the county in which Petty constables in Ireland. 23 Geo. 2. c. 14. s. 1. Ir. such

such torn or leet is, shall at their next sessions appoint for that time, and swear petty constables for the several districts and divisions within the precincts of such torn or leet respectively; and if the justices of the peace shall neglect so to do, then the justices of and at the next assizes for such county, (and the judges of the court of K. B. in term for the county of Dublin,) upon the presentment of the grand jury of such county, shall appoint and swear, or order to be sworn before a justice of the peace of such county, the person named in such presentment, into the office of petty constable for any district, &c. so neglected; provided however that the petty constables so appointed by the justices of the peace, judges of assize, (or judges of K. B.) shall not be compelled to serve for a longer time than if they had been duly appointed in the torn or leet. And this act s. 2. provides, (in a manner similar to the 13 & 14 Car. 2. c. 12. s. 15. Eng.) that if any petty constable, during the time of his serving in the office, shall die or remove out of the precincts of the district, &c. or shall be lawfully removed from the said office, then it shall be lawful for any 2 justices of the peace for the county, to appoint and swear a new petty constable in his room, to continue until the next torn or leet, or in default of such being held at the usual time, until the next sessions of the peace after such usual time, and in default of such next sessions until the next assizes; at which next torn, leet, sessions, or assizes, as the case shall be, the sheriff, seneschal, justices, or judges may approve of the constable so appointed and sworn, or appoint another to serve the remainder of the time of the constable so dying or removed. The 36 Geo. 3. c. 55. s. 28. Ir.* also empowers the grand jury of every county to appoint any number of sub-constables, not exceeding 10 in every barony or half-barony within such county; and such sub-constables shall be subject to all the regulations, powers, and provisions contained in the 32 Geo. 3. c. 16. Ir. which enacts, (s. 2.) that such constables shall at all times be aiding and assisting in preserving the peace and executing the law, within every barony or half barony, or in any other part of such

s. 2.

Ante page 253.32 Geo. 3. c. 16.
s. 2. Ir.*Duty of sub-constables.*

of

county, and obey such lawful directions as they shall receive from any magistrate within such county; and in case any such constable shall be guilty of any neglect or violation of duty, he shall be liable to be removed by any such grand jury, and incur such penalty not exceeding 40s., and such imprisonment in the common gaol not exceeding one month, as the justices at the quarter sessions for said county (after proof by 1 witness upon oath or on the confession of the party) shall impose: and by

s. 2.

s. 3. such constable shall have all power, privileges and authorities, and be subject to the same penalties and regulations, which any constable is by law subject or entitled to, and shall act as ministerial officers of the peace;

s. 10.

and by s. 10. shall be aiding in removing nuisances from the public highways, and in preventing encroachments and obstructions from being made thereon, and in preventing bridges or the battlements thereof from being injured or prostrated, and shall to the best of their power enforce all laws enacted for the preservation of the public highways and bridges, and enforce the penalties prescribed by the same. And by s. 3. for the better preventing

s. 3.

the commission of offences, and the more speedy and certain apprehending of offenders against the peace within every such county, and for assisting in the execution of the law therein, such constables shall be provided with proper arms and accoutrements at the expense of such counties: and this act limits the amount of such expense, the salary of such officers, their fees for transmitting prisoners, and also regulates the mode of levying the same. But by s. 8. no person shall be entitled to fill

s. 8.

the office of constable under this act, unless he shall have previously obtained a certificate from 3 magistrates resident in the same barony or half-barony, or if none such are resident therein, then of any 3 magistrates contiguous thereto, that the said person so to be appointed is in every respect qualified to discharge the duties of such office: and unless also (by s. 9.) he shall have taken

s. 9.

the following oath before one of the judges of assize or before the justices of the quarter sessions:—" I, *A. B.* Constable's oath.

" do swear, that I will well and truly serve our sovereign lord

“ lord the king, in the office of constable in the county
 “ of——; that I will see and cause his majesty’s peace
 “ to be kept and preserved, according to the best of my
 “ power, without favour or affection, malice or evil will;
 “ that I will to the best of my power remove, or cause to
 “ be removed, all nuisances from the public highways;
 “ and prevent any obstructions or encroachments from
 “ being made thereon; and that I will prevent to the best
 “ of my power, any bridges, or the battlements thereof,
 “ from being injured or prostrated; and that I will, to
 “ the best of my power, enforce all laws enacted for the
 “ preservation of highways and bridges, and enforce the
 “ penalties prescribed by the same; and that I will well
 “ and truly execute all warrants and precepts to me di-
 “ rected, from the justices of the peace of said county,
 “ according to law; and I will well and truly, according
 “ to my power, knowledge and ability, do and execute
 “ all other things belonging to the office of a constable,
 “ as long as I shall continue in the said office.” And the
 said judge or justices shall thereupon give a certificate of
 the taking of such oath according to a form thereby pre-
 scribed: and such constable shall deliver such certificate
 to the treasurer of the county, who shall enter the same
 in a book to be kept amongst the records of the county,
 and produce the same to the grand jury at each assizes.

*Exemptions
 from this office.*

Special exemptions from serving the office of constable,
 have been granted by certain statutes to which I shall
 merely refer: thus to dissenters upon their appointing
 sufficient deputies, and to teachers or preachers in holy
 orders by the 1 W. & M. c. 18. Eng.; to the prosecutors of
 felons by the 10 & 11 W. 3. c. 23. Eng.; and to persons
 serving in the militia by the 26 Geo. 3. c. 107. Eng. The
 6 Geo. 1. c. 5. Ir. contains the same exemption for dis-
 senters, &c. as the 1 W. & M. c. 18. Eng. And by the
 33 Geo. 3. c. 22. Ir. quakers are exempted from being
 high or petty constables, for the purposes of this act which
 consolidates the laws relating to the militia; and this act
 also exempts serjeants, corporals, drummers, and privates
 from being peace officers until discharged from the mi-
 litia. The 1 Geo. 1. st. 2. c. 13. s. 1. Eng. which requires
 the

the oaths of allegiance, supremacy, and abjuration to be taken as a qualification for holding offices, includes constables generally: but tithing men, headboroughs, and other inferior officers are by s. 20. excepted. And high constables as well as petty constables are excepted out of the Test Act 25 Car. 2. c. 2. Eng. which required, in addition to the oaths of allegiance, &c. the declaration against transubstantiation to be made, and the sacrament to be received according to the usage of the church of England. And the 1 W. & M. c. 18. s. 7. Eng. and 31 Geo. 3. c. 32. s. 7. Eng. enable dissenters and catholics to execute the office of high or petty constable by deputy, if they shall scruple to take the oaths required in respect to such office. But these statutes will be more fully stated in the next chapter.

In England the 3 Jac. 1. c. 10.—27 Geo. 2. c. 3.—*Remuneration to constables.* 18 Geo. 3. c. 19.—26 Geo. 3. c. 107.—41 Geo. 3. c. 78. and 42 Geo. 3. c. 90. provide for defraying the expenses of constables in conveying offenders to gaol, executing justices' warrants, levying penalties, doing the business of their respective parishes, &c. and discharging the duties imposed on them in respect to raising the militia. And in Ireland, the 17 Geo. 2. c. 6.—32 Geo. 3. c. 16.—and 36 Geo. 3. c. 55. empower grand juries to present a certain compensation to constables for transmitting prisoners, keeping the peace, and executing the law in their proper baronies, and for receiving the public money.

V. As to the *surveyors of highways*, the 13 Geo. 3. c. 78. Eng. which reduces into one act the several statutes for the amendment and preservation of the public highways in England, provides for the appointment of one surveyor of the highways, or more, in every parish, township or place. And for that purpose directs that on September 22, in every year, unless that day be a Sunday, and then on the day following, the constables, church-wardens, surveyors of the highways, and householders assessed to any parochial or public rate, shall assemble at the church or chapel, or if there be no church, &c. then at the usual place of public meeting, at the hour of 11 in the forenoon, and make a list of the names of at least 10 persons, each of whom hath an

§ 5.

Surveyors of highways—how appointed.

13 Geo. 3. c. 78. s. 1. to 15. Eng.

estate in lands, &c. lying within such district, in his own right or in right of his wife, of £10. by the year, or a personal estate of the value of £100. or occupier of a tenement of the yearly value of £30.; and if there shall not be 10 persons so qualified, they shall supply the number by inserting the names of the most sufficient and able inhabitants, out of which list the justices at a special sessions to be held for the purpose shall appoint one, two, or more of such persons to said office. And if any person so appointed shall refuse to serve, he shall incur the forfeiture of £5. if included in such list, or otherwise 50s.; but no person who hath served said office one year, shall be compellable to serve again within 3 years from such appointment and service. And by s. 1. 5. & 54.

Their salary.

a salary may be allowed by the justices to every such surveyor.

Their duty and powers.

The first duty which is imposed upon surveyors of highways by this act is to enforce the several provisions (s. 6. to 15.) in respect to removing all nuisances or encroachments which injure or contract such highways, as well as such obstructions and annoyances as may interrupt the passage of carriages, or of his majesty's subjects along the same. By s. 15. they are required to make and maintain every public cartway leading to any market-town, 20 feet wide at least, and every public horseway or driftway 8 feet wide at least, if the ground between the fences inclosing the same will admit thereof: and they are charged with several duties, by s. 16. to 23. in respect to widening, or diverting and turning public highways, or public bridleways or footways, and stopping up and enclosing old or unnecessary highways, &c. making satisfaction to the persons injured thereby. Such improvements are to be so made in pursuance of the orders of 2 or more justices, and such recompence is to be assessed to the owner of land, not exceeding 40 years purchase, by a jury to be impannelled at the quarter sessions, unless such owners shall agree with the surveyors for the amount of such recompence. By s. 16. the powers of

s. 16.

Powers of surveyors restrained as to pulling down houses, &c.

the justices or surveyors shall not extend to pulling down any house or building, or to taking away the ground of any garden, park, paddock, court, or yard. And by this section

section of the act, where there shall not appear sufficient money in the hands of the surveyor for the purposes aforesaid, then such 2 justices in case of agreement, or the court of quarter sessions after such verdict as aforesaid, shall order an equal assessment to be made and collected upon all the occupiers of lands, &c. in the respective parishes, &c. where such highways lie, and direct the money to be paid to the person or body interested, in such manner as the said justices or court of quarter sessions shall direct: provided that no such assessment to be made in any one year shall exceed the rate of 6*d.* in the pound of the yearly value of the lands, &c. so assessed.

Assessment upon parishes, &c. for widening roads, &c.

With respect to the repairs of roads: it is the duty of surveyors (by s. 23.) to give information upon oath, to the justices or any 2 or more of them, of all such highways, and of all bridges, causeways, or pavements upon such highways, as are out of repair and ought to be repaired by any person or body, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise; and the justices are thereby empowered and required to limit a time for such repairs, and to present such highways, &c. together with the persons, &c. liable to repair the same, at the next quarter sessions, unless such repairs have been effectually made within the time so limited. And by s. 24. & 25. every justice of assize (and the justices of the counties palatine, and of the great sessions in Wales) are empowered upon the view, and every justice of the peace either upon his own view, or upon the information of the surveyor of the highways upon oath, to make presentment at their respective assizes, great sessions, or quarter sessions, of any highway, &c. not sufficiently repaired, or of any other default contrary to this act; and to assess such fines as to them shall seem meet, for every default or offence so presented; and by s. 1. & 61. the justices of peace are empowered to hold special sessions for the highways. And by s. 27. to 33. the surveyors of highways are invested with sufficient power to raise and procure materials for such repairs. By s. 30. upon application by any such surveyor to the justices of peace at their special sessions, and

Repairs of roads, &c.

s. 23.

s. 24. & 25.

Presentments by justices of assize, &c.

s. 27. to 33.

Materials raised

s. 30.

Expenses—how defrayed.

oath

34 Geo.3. c.74.
s. 4. Eng.

Statute duty.

oath made of the sum which he hath *bona fide* expended, and which will be required for the purpose of buying such materials, or in making satisfaction for damages, or in erecting guide posts, or in repairing trunks, tunnels, plats, bridges, or arches, as well as for paying the salary of such surveyor, such justices or any 2 or more of them shall cause an equal assessment to be made upon all occupiers of lands, &c. in such parish, &c. not exceeding 6*d.* in the pound of the yearly value of the lands, &c. so assessed. And this act contained several provisions, (s. 34. to 52.) in respect to the statute duty, or proportion in which the inhabitants and occupiers of lands, &c. within the respective parishes, &c. should be chargeable to such repairs: but this act was amended in these respects by the 34 Geo. 3. c. 74. Eng. which enacts, that the surveyor, together with the inhabitants and occupiers of lands, &c. within each parish, township or place, shall, at proper seasons in every year, use their endeavours for the repair of the highways, and shall be chargeable thereunto as followeth, viz.:—Every person keeping a waggon, cart, wain, plough, or tumbrel, and 3 or more horses or beasts of draught used to draw the same, shall 6 days in every year, (if so many shall be found necessary) to be computed from Michaelmas to Michaelmas, send on every day, and at every place, to be appointed by the surveyor for amending the highways in such parish, &c. one wain, cart, or carriage, furnished after the custom of the country with oxen, horses, or other cattle, and all other necessities, and also 2 able men with such wain, &c. which duty so performed shall excuse every such person from his duty in such parish, &c. in respect of all lands, &c. not exceeding the annual value of £50. which he shall occupy therein: and every person keeping such team, draught, or plough, and occupying in the same parish, &c. lands, &c. of the yearly value of £50. beyond the said £50. in respect whereof such team duty shall be performed; and every such person occupying lands, &c. of the yearly value of £50. in any other parish besides that wherein he resides; and every other person not keeping a team, &c. but occupying

ing lands, &c. of the yearly value of £50. in any parish, &c. shall in like manner respectively and for the same number of days, find and send one wain, cart, or carriage furnished with not less than 3 horses, or 4 oxen and 1 horse, or 2 oxen and 2 horses, and 2 able men to each wain, &c. and in like manner for every £50. *per annum* respectively which such person shall occupy; such wains, &c. to be employed by the surveyor in the repairing the highways within the parish, &c. where such lands, &c. shall lie; and every person who shall not keep a team, &c. but shall occupy lands, &c. under the yearly value of £50. in the parish &c. where he resides or in any other parish, &c.; and every person keeping a team, &c. and occupying lands, &c. under the yearly value of £50. in any other parish than that wherein he resides, shall pay to the surveyor in lieu of such duty, the sums following, viz.:—For every 20s. of annual value of such lands, &c. one penny for every days statute duty which shall be required, not exceeding 6 days in every year; and every person shall in like manner pay one penny for every 20s. of the annual value of the lands, &c. which he shall occupy in any such parish, &c. above the annual value of £50. and less than £100. and so for every 20s. of the intermediate annual value of the lands which he shall occupy, and which shall fall short of the further increase of £50. for each day's statute duty which shall be required. But it is provided that no person keeping such team, &c. and performing duty with the same in the parish, &c. where he resides, and not occupying lands, &c. within the same of the yearly value of £30. shall be obliged to send more than 1 labourer with such team, &c. And by s. 2. every person who shall not keep a team, draught, or plough, but shall keep 1 cart or more, and 1 or 2 horses or beasts of draught only, used to draw in such carts, shall be obliged to perform his statute duty for the like number of days with such carts, &c. and 1 labourer to attend each cart, or to pay for the lands, &c. which he shall occupy, according to the above rate, at the option of the surveyor; and every person who shall keep a coach, postchaise, chair, or other wheel carriage, and

Money to be paid in lieu of statute duty by certain persons.

s. 2.

Duty required from other persons.

and not keep a team, &c. nor occupy lands, &c. of the annual value of £50. in the parish, &c. where he shall reside, shall pay to the surveyor one shilling in respect of every day's statute duty, for every horse which he shall draw in any such carriage, or shall pay according to the value of the lands, &c. which he shall occupy, according to the above rate, at the option of the surveyor; and if any of the said teams, &c. shall not be thought needful by the surveyor on any of the said days, then every such person shall upon receiving notice as therein directed send unto said work, for every one so spared, 3 able men, or pay to the surveyor 4s. 6d. in lieu thereof, at the option of the surveyor; and all such persons shall bring with them such shovels, spades, picks, mattocks, and other tools and instruments as are proper for the purposes aforesaid: and such persons and carriages shall perform such work for 8 hours in every of said days, within said parish, &c. or in carrying materials from any other parish, &c.; and if any labourer or driver shall be insufficient or shall refuse to work, the surveyor is thereby authorized to discharge every such team, &c. and recover from the owner such forfeiture as if the same had not been sent; but this statute (s. 4. & 5.) empowered the justices to exempt poor persons from the payment of such rates; and also (by s. 6.) authorized them in certain cases to require the performance of the statute duty in kind. So much

13 Geo. 3. c. 78. s. 38. Eng. of the 13 Geo. 3. c. 78. s. 38. and 34 Geo. 3. c. 74. s. 3.

34 Geo. 3. c. 74. s. 3. Eng. as allowed persons to compound at certain rates for the performance of the statute duty, is repealed by the 44

44 Geo. 3. c. 52. E. which enacts, that any person liable to perform statute duty, by sending one or more teams, draughts,

Composition for statute duty.

or ploughs, with men, horses, or oxen, shall and may compound for the same, by paying to the surveyor of highways, (at the time and in manner in the 13 Geo. 3. c. 78. mentioned) such sum as the justices of peace for the limits wherein the parish, &c. is situate, or the major part of them, at their special sessions to be held in the first week after Michaelmas quarter-sessions in every year, shall adjudge to be reasonable, not exceeding 12s. nor less than 3s. for each team, for each day; and in default of their ad-

judging

judging the same, then the sum of 6s.; and for each cart with 2 horses or beasts of draught, not exceeding 8s. nor less than 3s.; and in default of their adjudging the same, the sum of 4s.; and for each cart with one horse or beast of draught, not exceeding 6s. nor less than 2s.; and in default of their adjudging the same, the sum of 3s.

The 13 Geo. 3. c. 78. contains several provisions for the protection of persons acting in execution of this act, by limiting the period for bringing actions against them to 3 months; enabling such defendants to plead the general issue; and giving them treble costs in case of obtaining judgment, &c.; and the plaintiffs in such actions are thereby also barred, if tender of sufficient amends shall have been made. No proceedings in pursuance of this act are to be quashed for want of form, or removeable by *certiorari*; but an appeal may be made to the quarter-sessions by any person aggrieved by any thing done in execution of this act. And this statute contains these peculiar provisions, that the surveyor shall be a competent witness in all matters, relative to the execution of this act, notwithstanding his salary may arise in part from the forfeitures thereby inflicted; and any inhabitant of any parish, &c. in which any offence shall be committed contrary to this act, shall be also deemed a competent witness.

*Actions and
their incidents.*
13 Geo. 3. c. 78.
s. 76. to 81.

The 13 Geo. 3. c. 84. Eng. consolidates the general laws for regulating the turnpike roads in England, and enacts that where the powers given by several turnpike acts are ineffectual, for providing materials for the use of the turnpike roads therein described, and also for enlarging, diverting, and turning such turnpike-roads, and stopping up and selling of the old roads, and also for making, opening, and cleansing of ditches and drains, and the cutting and pruning of hedges and trees, and also for calling forth the statute duty which shall belong to such turnpike-roads, the surveyor of every turnpike-road may with the approbation of the trustees, put in execution the several powers more amply given for the like purposes in the general highway act, to the surveyor of the parish, &c.

Turnpike roads.
13 Geo. 3. c. 84.
s. 70. Eng.

The 11, 12, and 13 Jac. 1. c. 7. Ir. adopted the principle which was first established in England by the 2 & 3 Ph.

*Powers of grand
juries in Ireland*

Ph. & M. c. 8. Eng. (as amended by the 5 Eliz. c. 13. and 18 Eliz. c. 10.) for repairing highways, by obliging the parishioners, in proportion to the quantity of land occupied, to provide carriages, horses, and men, with the necessary tools and instruments, to be employed in mending the highways; and the householders, cottiers and labourers, were thereby also compellable to serve in person at such work, under such penalties, as in said act mentioned. This Irish act was amended by several subsequent statutes, but was finally repealed, and the principle of the application of 6 days labour to the repair of roads, superseded by the 5 Geo. 3. c. 14. Ir. The several laws made for the amendment and repair of roads having proved ineffectual, and having become confused from their multiplicity, the 36 Geo. 3. c. 55. Ir. has therefore consolidated and amended their various provisions, and some further amendments have been since made by the 37 Geo. 3. c. 35. 40 Geo. 3. c. 88. and 46

36 Geo. 3. c. 55.
s. 2. Ir.

*Presentment for
widening roads
not less than 32
feet.*

s. 14.

*Making new
roads not less
than 32 feet.*

Geo. 3. c. 96. By the 36 Geo. 3. c. 55. s. 2. Ir. it shall be lawful for the grand jury of any county, county of a city, or county of a town, at any assizes, to present any part of any road leading directly from a market town to a market town, or from a market town to the sea, or to any colliery, coal pit, or culm pit, to be widened to any breadth not more than 52, nor less than 32 feet in the clear; and any part of any other public road to be widened to any breadth not more than 44 feet nor less than 24 feet; and to present such sums of money as shall be necessary for widening the same, and making fences instead of those which shall be taken down or destroyed, to be raised on the barony or half barony, or county of a city or town, in which the same shall be situate. And by s. 14. any grand jury may also present upon the request of any person, any new road to be laid out and made between any 2 market towns, or from any market town to the sea, of any width not less than 32 feet nor more than 52 feet in the clear, and to present such sums as shall be necessary for laying out and making the same, and making fences thereto, (not exceeding 6*d.* by the perch for laying out, and 1*s.* 6*d.* for every perch

of

of fence) to be raised on the barony, &c. in which the same shall be situated. But by s. 80. where a road cannot be made of the breadth of 32 feet without much difficulty and unnecessary expense, the grand juries of such counties may present such road, or so many perches thereof, in such particular places to be made or repaired of such width as they shall think proper, not less than 16 feet in the clear. By s. 9. they may also present any foot-path to be made or repaired on any road, or on or within the ditch along the side of any road, with the consent of the occupier of the land, and present any sum not exceeding 1s. 6d. for making, and 9d. for repairing, for each perch, to be raised on the barony, &c. By s. 46. they are empowered to present any old road to be stopped up, if it shall appear to them that the said road is no longer necessary to be kept open for travellers, or that a new road has been made which answers all the purposes of the old one. And by s. 12. they may also present such sum to be raised on the barony, &c. not exceeding 1s. 6d. by the perch, as may be necessary for filling such trenches or drains of any ditch which shall be situate next to any part of any public road, (whether post road or not) and making a sufficient fence instead thereof. And grand juries are empowered (s. 6.) to present in like manner any part of a public road to be repaired, and to present any sum of money which shall be necessary for that purpose, to be raised as aforesaid. By s. 18. any grand jury may present to be raised on the county at large, such sums as may be necessary for lowering any hill, or filling up any hollow, or both, on any public road within the county leading from one market town to another. And so also by s. 21. for building or repairing any wall, or part of a wall, necessary to the support of any road, or to prevent any steep banks of earth from falling upon any road, or in erecting any fence, railing, or wall, for the protection of travellers from dangerous precipices or holes lying on the side of any public road. By s. 81. grand juries are further authorized to enter into contracts for keeping any parts of the public roads within their respective counties in repair

s. 80.

Where impracticable to make roads 32 feet wide.

s. 9.

Footpaths.

s. 46.

Stopping up old roads.

s. 12.

Filling trenches, &c.

s. 6.

Repairs of roads.

s. 18.

Lowering hills, &c.

s. 21.

Building walls, &c.

s. 81.

Contracts for Repairs.

pair for any time not exceeding 7 years, and to present any sum not exceeding 6*d.* a perch by the year, to be raised off the respective baronies or half baronies in said counties, &c. And by the 40 Geo. 3. c. 88. Ir. such contracts may be renewed, and any further contract made which shall not exceed 12*d.* a perch for such repairs.

Affidavit required for obtaining presentments;

and for receiving the money presented.

**vide s. 38. post.*

46 Geo. 3. c. 96. l.

Overseers may account at sessions.

36 Geo. 3. c. 55. s. 14. Ir.

Form to be observed in obtaining presentments for new roads.

But the former of these statutes (36 Geo. 3. c. 55.) provides that before any presentment can be granted, the affidavit of two persons shall be made (in a particular form prescribed by s. 3, 7, 9, 12, 14, 19, 22, and 82) according to the nature of such presentment, ascertaining the sum which will be necessary, or which will be a reasonable charge for the work so presented to be done; and no money shall be paid by the treasurer of the county on account of any such presentment, until an affidavit of one of the overseers to be appointed by the grand jury* shall be made, (in such form as prescribed by s. 5. 8. 12, 15, 20, 24 & 83) of the faithful and honest expenditure of the money presented, and of the work being well and sufficiently executed according to such presentment, and until such affidavit shall be first allowed by the grand jury and the court; which several affidavits are directed to be sworn before a justice of peace of the proper county. The 46 Geo. 3. c. 96. I. provides that overseers of roads may lay their accounts before the justices at the sessions, who may allow the same, or, if disputed, shall refer the same to the assizes, upon such affidavit being sworn and recognizance entered into, as thereby required. With respect to laying out new roads, it is provided by the 36 Geo. 3. c. 55. s. 14. that no presentment shall be made for such purpose, unless it shall appear to the grand jury, by the affidavit of one witness, sworn before a justice of peace of the county, that a map of such new road has been deposited with the treasurer of the county 21 days at least before the commission day of the assizes, and that a notice setting forth that an application is intended to be made at the next assizes for a presentment to lay out a new road from——to——, distinguishing the several town lands and baronies or half baronies through which it is intended to be carried, with the

the number of perches it is to be made in length through each town land, has been personally served upon or left at the house of each occupier of the land through which such new road is intended to be made, 21 days at least before the commission day of the assizes, and that a like notice has been posted upon the door of the county court-house 21 days before the assizes; nor unless it shall also appear by an affidavit sworn in like manner, (unless such road be a post road presented under 32 Geo. 3. c. 30.) that no part of such new road is to be made through any deer-park, or field enclosed with a wall, built of lime and stone or bricks, 5 feet high or more, without the consent of the owner thereof. By s. 58. all affidavits for presentments for making, widening, and repairing roads, &c. shall be lodged 6 days before the commission day of the assizes, with the acting secretary of the grand jury, at his office in the county town, which is required to be kept open from the hour of 11 until 3, for 10 days at least previous to every assizes.

s. 58.

Affidavits to be lodged 6 days before assizes.

The powers of the grand juries in respect to presenting roads, are qualified with the following restrictions:

Power of grand juries not to extend to pulling down walls;

By s. 4. where any part of any road to be widened, (as by s. 2.) shall be enclosed on either side with a wall built entirely with lime and stone or brick, 5 feet high, such presentment shall not authorize any person to pull down said wall, without the consent of the owner thereof. And by s. 14. any new road, to be made in pursuance of this clause of the act, shall not be made through any deer-park, or field enclosed with a wall built of lime and stone or bricks, 5 feet high, without the consent of the owner. And no

s. 4.

s. 14.

or carrying roads through deer-parks, &c.

part thereof is to be made through any house, entirely built with lime and stone or bricks, or through any office or orchard belonging to any person inhabiting a house so built, without the consent of such person, unless the road be from post town to post town, and presented under the 32 Geo. 3. c. 30. Ir. which excepted only demesnes or deer-parks; but the 46 Geo. 3. c. 134. I. also excepts houses above the value of £100. fields enclosed with walls built of lime and stone or brick, planted lawns or avenues, and orchards planted before 17 May, 1805.

The

Mode of traversing presentments.

s. 43.

The 36 Geo. 3. c. 55. s. 43. Ir. provides, that any presentment made for laying out or making any new road, or widening any old road, shall be traversed only at the assizes at which it shall be made, but that it shall be lawful for any occupier or owner of the ground, through which such new road is to be made, or into which such old road is to be widened, to traverse the presentment for the same for damages at such assizes, (and such traverse shall be then tried,) or at the ensuing assizes; and the jury which shall try it shall true verdict give whether any and what damages will accrue thereby to the traverser, and upon the damages so found being paid to the traverser, or deposited for his use with the treasurer of the county, the overseer may proceed in the execution of the presentment; and the grand jury may present at their discretion the sum so found, to be raised on the county, or on the barony or half barony, county of a city or town, in which the traverser shall have made it appear that he sustained the damage; to which presentment no traverse shall be allowed. And as to presentments for stopping up old roads, any person may by s. 46. enter a traverse thereto at the same or the next assizes, and if such traverse shall not be tried within a year after such presentment shall be made, the presentment shall stand good. And by s. 44. every traverse to any presentment by virtue of this act may be tried upon the entry of the presentment in the crown book, and the traverse taken thereto, without making up any record, so as such entry be sufficient in substance, though defective in form.

s. 46.

s. 44.

Duty of clerk of the crown in respect to presentments.

s. 51.

The clerk of the crown is required by s. 51. within 4 days after every assizes, to deliver to the treasurer of the county, copies of all presentments made at said assizes, and also of all *queries* discharged at the same, signed by himself, upon pain of forfeiting £5. for every default, to be recovered by civil bill; and shall also deliver to the grand jury at every assizes, a true return of all *queries* and presentments which have not been duly accounted for and discharged, and for wilful neglect therein shall be incapable of acting in said office for the future.

Grand

Grand juries are empowered (by s. 48.) to appoint a collector for each barony, half barony, or county of a city, &c. and to present a sum not exceeding 9*d.* in the pound for collecting. And by s. 50. the several constables and sub-constables shall, upon pain of forfeiting £5. (to be recovered before a justice of the county, upon the oath of 2 witnesses) be aiding such collectors to levy all money presented to be raised; but if no such collector shall be appointed, the high constable of such barony, &c. shall be the collector within his district.

*Appointment of
barony collectors.*

s. 48.

s. 50.

*Constables to
assist.*

By s. 52. the treasurer of each county shall within one month after he shall have received copies of the presentments, issue his warrants to the collectors of each barony, &c. to raise and levy the same by distress and sale of the goods of every person refusing to pay his proportion thereof. And for ascertaining such proportions, every person to whom such warrant shall be sent, shall within 10 days after, &c. deliver or send to the seneschal or church-wardens of each manor, parish, or denomination of land contained in such warrant, or if there be no such seneschal or church-warden, then to any principal residing inhabitant, an account in writing signed by himself, of the sum he is required by said warrant to levy upon such manor, &c. and to desire that the said sum may be applotted thereon; and every person who shall receive such account, shall, under the penalty of £10. (to be recovered by civil bill) post up within 6 days after the receipt thereof, on the door of the Church, or any other conspicuous place in said manor, &c. a notice signed by himself, requiring the landholders and inhabitants to meet on a day and at a place therein to be named, to choose 2 or more persons to applot the sum to be in such notice mentioned, required to be levied upon such manor, &c.; and the persons so chosen shall applot the same, and shall underneath their applotment make oath before a justice of such county, that they have made the said applotment justly, according to the best of their skill, without favour, affection, or malice, and shall, within 30 days after being so chosen, deliver the same to the person empowered to collect.

Duty of treasurers of counties.

s. 52.

s. 53.

*Presentments
applotted.*

collect the same, (under the penalty of 10s. for every day's default, to be recovered by civil bill,) who shall accordingly levy said money, and 10s. for the applotters fees; and in case no full and sufficient applotment shall be returned within 36 days after such account is so sent, then the collector or his deputy, or the high constable, may enter into such manor, &c. and distrain the whole or any part thereof, and levy the full sum. By s. 56. the treasurer of every county shall give copies of such presentments as he shall receive, to any of the overseers, on demand or within 10 days after, without fee; and shall make up his accounts upon oath at every assizes, and lay them fairly written before the grand jury; and no treasurer shall compound for any money to be raised, nor make any deductions for any sum he shall pay to any person, but such as he shall account for; and every treasurer is hereby also required to keep an office open upon every day, (Sundays excepted) for the space of 14 days next after every assizes, from 9 in the morning until 3 in the afternoon, in the town wherein the assizes were last held, and to pay all such *queres* as shall have been discharged, without fee, if he shall have public money to pay the same; and if he shall be guilty of any neglect or offence contrary hereto, he shall be fined, or committed to the county gaol, at the discretion of the judge of assize.

s. 56.

*Further duty of treasurer**how enforced.**Appointment of overseers.*

s. 38.

s. 45.

Action or prosecution against overseers.

By s. 38. it shall be lawful for any grand jury to appoint one overseer or more, who can read and write, for carrying into execution any presentment which they shall make by virtue of this act, and to present for the wages of such overseer, any sum not exceeding the rate of 1s. for each pound of the money expended, to be raised at the time and in like manner as the sum so to be expended. And by s. 45. if it shall appear to the grand jury by the oath of 2 persons at any assizes, within 2 years after any *quere* on any presentment by which money was granted shall be discharged, that the money was not expended agreeable to the presentment, or if the overseer shall be convicted of perjury in his accounting affidavit, the grand jury may direct the

treasurer

treasurer to sue such overseer by action or civil bill for the money so fraudulently received.

And for the better preservation of the public roads from encroachments and nuisances, and for the more effectual execution of this law, the grand juries are empowered by s. 76, to appoint for each barony or half barony, or county of a city or town, the high constable or other person to be a conservator of the roads, and all public works thereon, who shall have all the powers of an overseer, and to present thereon any sum not exceeding £25. (or £10. if a constable appointed under 27 Geo. 3. c. 40.) at each assizes for his trouble; but no money shall be paid to him until he shall have laid upon oath before the grand jury a full account of his proceedings in the execution of his office.

Appointment of conservators.

s. 76.

By s. 75. a power is given to any justice of the peace of any county, having a freehold estate of £100. a year in such county, to order under his hand and seal any sum not exceeding 40s. to be expended in repairing any public road within such county, which may be suddenly damaged, provided it shall appear by the affidavit of 2 persons, that the repair of such road cannot be delayed to the next assizes without prejudice to the county, and such justice may appoint an overseer thereof; and the grand jury of such county, at the next assizes, may present the sum so expended to be raised on the barony or half barony, or on the county of the city or town where the same is situate; but no justice shall make more than one such order between assizes and assizes.

Power to justices of peace to repair sudden damage.

s. 75.

This act s. 90. enables defendants sued for any thing done in execution of this act, to plead or avow generally, and entitles them to treble costs in case of obtaining a verdict or judgment, &c. in such action, or a dismissal upon any civil bill.

Protection to persons acting in execution of this statute.

s. 90.

The 32 Geo. 3. c. 30. Ir. also enables grand juries to present any new road to be laid out in the respective counties, of any width not greater than 52 feet, nor less than 42 feet in the clear, for the purpose of shortening the distance between the city of Dublin and any post town to which his majesty's mails are conveyed, or for avoiding any hill or precipice, or otherwise rendering the

Post roads.

32 Geo. 3. c. 30. Ir.

the communication between the said places more safe and convenient; and also to present all sums necessary for laying out the same, and making fences thereto, not exceeding 6*d.* in the perch for laying out, and 1*s.* 6*d.* for each perch of fence, to be raised off the county at large, or the barony or half barony, or county of a city or town, in which the same shall be situate. And they

s. 5. are also empowered by s. 5. to present any part of any old road leading from the city of Dublin to any post town, &c. to be widened to any width not exceeding

s. 7. 52 feet and not less than 42 feet; and (by s. 7.) to present such sums to be raised as aforesaid, as shall be necessary for that purpose. By s. 9. it shall be lawful for

s. 9. any grand jury to present such sum, not exceeding 1*s.* 6*d.* by the perch, as may be necessary for filling up the drain or trench of any ditch situate next to any public road, and making a sufficient fence instead thereof.

s. 14. And by s. 14. any grand jury may also present any money to be raised off the county at large for lowering any hill, or filling up any hollow, or both, on any such post road. And this act contains several provisions similar to those above-mentioned of the 36 Geo. 3. c. 55.

35 Geo. 3. c. 38. Ir. and has been since amended by the 35 Geo. 3. c. 38. Ir.
45 Geo. 3. c. 43. I. and 46 Geo. 3. c. 134. I.
46 Geo. 3. c. 134. I.

Turnpike roads. As to the turnpike roads of Ireland, the statutes concerning them are principally of a local description, but it may be proper to state a few provisions, which are of a general nature.—The 21 Geo. 2. c. 16. s. 1. Ir. enacts that the trustees of such roads and their successors shall

Trustees how to sue and be sued. be persons capable to sue and to be sued in law and equity, by the name of the trustees appointed for putting in execution the powers and authorities mentioned in said acts, and may use a common seal for such purposes, and shall be also capable to take securities to them as trustees, for performance of any agreement, or for the due execution of any power committed to any person concerned in any road, as if they were respectively incorporated. And they are accordingly required by s. 2. to appoint a clerk or register, the service of whom with any *subpæna*, order, decree, or process, shall be good service of said trustees, so as such service be made 20

days

days before the return of such *subpoena*, &c. or the time appointed by such order, &c. for obedience thereto.

By the 13 & 14 Geo. 3. c. 26. s. 1. & 2. Ir. the trea- 13 & 14 Geo. 3.
c. 26. s. 1 & 2
Ir.

surers of turnpike roads (or the receivers of the tolls where there shall be no treasurer, or where the treasurer shall be absconding or insolvent) shall deposit with the clerk of the peace of every county, through which such roads run, true copies of all contracts for making and repairing same, or any bridges thereon, made with the commissioners thereof, and of all orders made by said commissioners relating to such road, within one month after making such contract or order, and on every 1st Treasurer's ac-
counts regis-
tered,

October the full annual produce of the toll, and of the expenses of collecting the same, upon pain of forfeiting £20. for every calendar month they shall fail so to do, to be recovered by civil bill in the name of the clerk of the crown. And the 19 & 20 Geo. 3. c. 50. Ir. further 19 & 20 Geo. 3.
c. 50. Ir.

requires every turnpike treasurer in like manner to return true copies of every lease, article, or agreement, for setting the gates or tolls since the last return, with an account of his receipts and payments, on account of said road, and number of perches repaired during said time: and authorizes the judge of assize to examine the clerk of and examined,

the peace upon oath as to such returns having been made as are required by these acts, and to fine the treasurer of any turnpike road, in any sum not exceeding £20. for any such default: such fines to be applied to the repairs of such road.

This act also enables the grand jury of any county, to examine the treasurer of any turnpike road in such county, upon oath, as to the state of any such road. and as to all matters relating to the tolls, rents, debts, and credits thereof: and upon an affidavit being sworn before one of the judges of assize, of part of such road being bad, and of sufficient being in the treasurer's hands, or by rents or tolls, to repair the same, such grand jury may present such part to be repaired by the treasurer in a certain time, which presentment, if Powers of grand
juries in respect
to turnpike
roads.

[**fiated*] by the judge, shall be obeyed: and if *quere* * *scanned* is the
word in the
printed sta-
tute. thereon shall not be answered at the next assizes, so as to shew the work to be done accordingly, the judge may order execution against the treasurer for the sum men-

13 & 14 Geo. 3.
c. 26. s. 6. Ir.

*Remedy for
frauds of turn-
pike commission-
ers, &c.*

tioned in such presentment; and the treasurer acting after, forfeits £5. to prosecutor by civil bill at next assizes. And by the 13 & 14 Geo. 3. c. 26. s. 6. Ir. where it shall be alleged that any turnpike commissioner or other person hath misapplied, wasted, or embezzled any part of the tolls of any turnpike road, or broke or not performed any contract or agreement relative thereto, the person so alleging shall make or cause to be made an affidavit, as if in a cause depending in the court of Ch. or Exc. between the attorney general, at the relation of such person so alleging, plaintiff, and the person so complained against; defendant, stating the charges of such misapplication, &c. and that the relator is not prompted by malice or ill will to any person, and that the proceeding has not been contrived to favour or protect the defendant against any other proceeding, and that the relator is worth £200. above all his just debts, or that he is ready to give such security for costs as the court shall think reasonable; and upon the filing of such affidavit the attorney general shall permit a motion to be made in his name, in Ch. or Exc. for an order that the person complained against shall answer such affidavit; upon the coming in of which answer the court may either dismiss the complaint with costs, or order that a bill or information shall be filed against the person complained against, and that he shall in due time answer such the information, &c.; and the court shall proceed in the most summary manner, as in possessory causes, and order an examination of witnesses, and hear the cause, and make its decree therein, and direct all proper inquiries and award costs to or against the relator, and at any stage of the cause order the relator to give security for costs, with a reciprocal right of appeal to the parties; and if it shall appear that the relator has entered into a collusion with the person complained against, or if he shall collusively forbear to prosecute his suit, the court may order the cause to be carried on by any other person in the relator's name, entering into a security to indemnify the relator from costs; and the relator in every such case shall be decreed to one fourth of the sum

sum received, and to the costs expended in such suit; and the residue of the sum recovered shall be applied to the performance of the contract, or to the making or repairing the neglected road or bridge. But by s. 7. no such suit shall be commenced unless such complaint shall be made within 4 years after such misapplication, &c. nor against the executor or administrator of any person charged with such misapplication, &c. unless a suit shall have been commenced against the person whom such executor, &c. shall represent, in the life time of such person.

As to bridges in England, it was a provision of Magna Charta 9 Hen. 3. c. 15. that no town nor freeman should be distrained to make bridges, but such as of old time and of right had been accustomed to make the same. *Making and repairing bridges.*
9 Hen. 3. c. 15.
E. & L.

And the 22 Hen. 8. c. 5. Eng. enacts that the justices of peace in every shire, franchise, city, or borough, or 4 of them at the least (one to be of the quorum) shall have power to inquire and determine in general sessions, of annoyances of bridges broken, and to make process and pains upon every presentment before them for reformation of the same, against such as ought to be charged for amending such bridges, as the justices of K. B. used to do. *22 Hen. 8. c. 5.
Eng.*

And by s. 2. & 3. when it cannot be known what hundred, riding, wapentake, city, town, parish, person, or body, ought to make such bridges, if they be without a city or town corporate, they shall be made by the inhabitants of the shire or riding, and if within the city, &c. then by the inhabitants thereof; and if part of such bridges be in one shire, &c. and part in another, or if part be within any city or town corporate, and part without, the inhabitants of such shires, ridings, cities or towns, shall be charged to amend such part as shall be within their respective limits. *s. 2. & 3.*

And by s. 4. the justices of peace within the shires and within every city, &c. shall have power to tax every inhabitant within the limits of their commissions, for the repairing of such bridges, and to make 2 collectors of every hundred, and to appoint 2 surveyors to see any such decayed bridge repaired. *s. 4.*
And the justices are also empowered by s. 4 & 8. to allow such reasonable charges to the surveyors and collectors *s. 8.*

lectors as shall be thought convenient, and to issue process against them, their executors, &c. to compel them to account, or commit them to ward, till they truly account, if they shall refuse so to do. And by s. 5. where any bridges lie in one shire, and such persons, &c. lands, &c. which ought to be charged to the making and amending of such bridges, lie in another shire, or where such bridges be within any city, &c. and the persons, &c. lands, &c. that ought to make or repair such bridges, be out of the said cities, &c. the justices in the shire, city, &c. within which such bridges or any part thereof shall be, shall have power to hear and determine all such annoyances within the limits of their commission, and if the annoyances be presented, then to make process into every shire against such as ought to amend any such bridges, and to do in every such case as if the persons, lands, &c. were within the same shire, &c. city, &c.: and all sheriffs and bailiffs of liberties, shall execute such process from the justices, upon pain to make such fine as shall be set by the justices. The 1 Ann. st. 1. c. 18. Eng. contains some further provisions as to the collecting the assessments for the repair of bridges. And by s. 5. all matters concerning the repairing of bridges and highroads shall be determined in the county where they lie, and shall not be removed by *certiorari*. And by s. 7. persons authorized by this act to put the same in execution may plead the general issue, and give this act and the 22 Hen. 8. c. 5. in evidence, and if plaintiff become nonsuit, or forbear further prosecution, or suffer discontinuance, or if a verdict pass against him, the defendant shall recover his double costs. And this act (s. 13.) recites that many persons or bodies were of right obliged to repair decayed bridges and the highways thereto adjoining, but the inhabitants of the county, &c. in which such decayed bridges lay, were not therefore allowed upon information or indictments against such persons, &c. for not repairing &c. to be legal witnesses, and therefore enacts that their evidence shall be admitted in all such cases. By the 43 Geo. 3. c. 59. E. the same powers of procuring materials and removing nuisances are given to the surveyors of bridges, as are vested in the surveyors of highways, by

1 Ann. st. 1. c. 18.
Eng.

s. 5.

s. 7.

s. 13.

43 Geo. 3. c. 59.
E.

by the 13 Geo. 3. c. 78. Eng.; and all the powers and provisions of said act are extended to bridges, for the purposes of their amendment or alteration.

In Ireland, the 36 Geo. 3. c. 55. s. 21. Ir. empowers the grand jury of any county, &c. at any assizes held for the same, to present any sum of money to be raised on the county at large, and to be expended in building, rebuilding, repairing, altering, or enlarging any bridge, pipe, arch, or gullet, built of stone or brick or wood, under or on any road, or in filling or gravelling over any such bridge, &c. But by s. 22, before any money can be presented for such purpose, an affidavit of 2 persons sworn before a justice of such county, setting forth the sum required, and that the work cannot be executed for a smaller sum, according to the plan and estimate annexed, shall be first laid before the grand jury. And by s. 23. no presentment for any greater sum than £10. shall be fiated at any assizes, for building any bridge, &c. unless it shall appear to the court by the certificate of the foreman of the grand jury at some preceding assizes, that such affidavit, estimate, and plan, had been laid before such grand jury, and read to them, unless where the new bridge, &c. is to be built in the place of one which has been carried away, destroyed, or become impassable for carriages since the assizes immediately preceding. And by s. 24. no money shall be paid by the treasurer, until the accounting affidavit of one of the overseers according to a form hereby prescribed, shall be allowed by the grand jury and the court. This act (s. 75.) empowers a justice of peace of the county, to order any sum not exceeding £5. to be expended in repairing any bridge which may be suddenly damaged, in like manner as is provided in respect to any public road within such county, *ante* page 271. The 19 & 20 Geo. 3. c. 41. Ir. empowers grand juries to present bridges to be built by private persons at their own expense, according to approved estimates, and in consideration of tolls agreed on, and after 41 years to redeem such tolls, by presenting on the county at large the sum expended, with interest.

Presentments for bridges in Ireland.

36 Geo. 3. c. 55. s. 21. Ir.

s. 22:

Mode of obtaining such presentments.

s. 23.

s. 24.

s. 75.

19 & 20 Geo. 3. c. 41. Ir.

Toll Bridges.

s. 1.—12.—13.

§ 6.

VI. *Overseers of the poor* were first appointed by the 43 Eliz. c. 2. Eng. which enacted (s. 1.) that the church-wardens

Overseers of the poor.

43 Eliz. c. 2.
Eng.

*Their power of
relieving the
poor.*

Poor rate.

13 & 14 Car. 2.
c. 12. Eng.

*Their power of
removing them to
the place of their
settlement.*

3 W. & M. c. 11.
Eng.

*What shall make
a settlement.*

wardens of every parish, and 4, 3, or 2 substantial householders, respect being had to the greatness of the parish, should be nominated yearly in Easter week, or within one month after Easter, under the hand and seal of 2 or more justices of the peace of the county, (whereof one to be of the quorum,) dwelling in or near such parish or division, to be overseers of the poor, who should with the consent of 2 such justices, take order for setting to work the children of all such whose parents should not by the church-wardens and overseers be thought able to keep and maintain their children, and also for setting to work all persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade to get their living by; and to raise weekly or otherwise by taxation of every parson, vicar, and other inhabitant, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods, in the said parish, a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work, and also a competent sum for the necessary relief of the lame, impotent, old, and blind, and such others as are poor and not able to work; and also for the putting out

of such children to be apprentices. But the 13 & 14 Car. 2. c. 12. Eng. recites that the number of poor within England and Wales is very great and burthensome, and therefore enacts that it shall be lawful, upon complaint made by the church-wardens or overseers of any parish, to any justice of peace, within 40 days after any poor person shall come to settle in any tenement under the yearly value of £10. for any 2 justices, (one of the quorum) by warrant to remove such person to such parish where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days, unless he gives security for the discharge of the parish; but any person aggrieved by such judgment may appeal to the next quarter-sessions.

By the 3 W. & M. c. 11. Eng. the 40 days continuance of a poor person in a parish or town to make a settlement, shall be accounted from the publication of a notice in writing

writing which he shall deliver, of the house of his abode, and the number of his family, to the church-warden or overseer of the poor; which notice the church-warden, &c. shall cause to be read publicly, after divine service, in the church or chapel of the parish, &c. on the next Lord's day, and register in the book kept for the poors' accounts.*

* This clause explains the
1 Jac. 2. c. 17.
s. 3. Eng.
s. 6.

And by (s. 6.) a legal settlement may be gained by any person who shall come to inhabit in any town or parish, and execute any public annual office in such town, &c. during one year; or pay his share toward the public taxes of the town or parish; though no such notice be delivered as above mentioned. But by the 9 Geo. 1. c. 7. s. 6. Eng. no person shall be deemed to have a settlement, by paying the scavenger's rate or repairs of the highway. And the

9 Geo. 1. c. 7.
s. 6. Eng.

43 Geo. 3. c. 161. s. 59. G. B. excepts also the assessed taxes payable by this act. And by the 35 Geo. 3. c. 101.

43 Geo. 3. c. 161
s. 59. G. B.

s. 4. Eng. no person who shall come into any parish shall gain a settlement by being rated to any tenement under the yearly value of £10. The 3 W. & M. c. 11. Eng.

35 Geo. 3. c. 101.
s. 4. Eng.

further enacts, (s. 7.) that if any unmarried person, not having a child, shall be hired into any parish or town for one year, such service shall be adjudged a settlement, though no such notice as above mentioned be delivered, &c. But by the 8 & 9 W. 3. c. 30. s. 4. Eng. no hired

3 W. & M. c. 11.
s. 7. Eng.

person shall be adjudged to have a settlement, unless such person continue in the same service during one whole year. And by the 3 W. & M. c. 11. s. 8. Eng. if

8 & 9 W. 3.
c. 30. s. 4. Eng.

any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a settlement, though no such notice be delivered, &c. as required by s. 5. *supra*.

3 W. & M.
c. 11. s. 8. Eng.

The 31 Geo. 2. c. 11. s. 1. Eng. also enacts, that no person bound an apprentice by any deed, writing, or contract,

31 Geo. 2. c. 11.
s. 1. Eng.

not indented, being first legally stamped, shall be liable to be removed from the town, parish, or place, where he or she shall be so bound an apprentice, and resident 40 days, by any order of removal granted by any 2 justices, or by any order of the general or quarter sessions, on account of such deed, &c. not being indented, only. By

the 9 Geo. 1. c. 7. s. 5. Eng. the acquisition of an estate by purchase, will not entitle the person purchasing to a

9 Geo. 1. c. 7.
s. 5. Eng.

*

legal

8 & 9 W. 3. c. 30.
s. 1. Eng.

Power of removal
restrained as
to certificate
poor.

9 & 10 W. 3.
c. 11. Eng.

Settlement how
acquired by cer-
tificate person.

12 Ann. st. 1.
c. 18. Eng.

33 Geo. 3. c. 54.
s. 24. Eng.

Maintenance of
poor by incorpo-
rated societies.

legal settlement, for any longer time than such person shall inhabit in such estate, unless the consideration for such purchase shall amount to £30. The 8 & 9 W. 3. c. 30. Eng. provides (s. 1.) that if any person that shall come into any parish to inhabit and reside, shall deliver to the church-wardens or overseers, a certificate under the hands and seals of the church-wardens and overseers, or the major part of them, of any other parish, or of the overseers of the poor of any other place where there are no church-wardens, attested by 2 witnesses, owning the person to be an inhabitant settled in that parish, such certificate having been subscribed by 2 justices of the county, &c. wherein the parish from which such certificate shall come doth lie, shall oblige the said parish to provide for the person, together with his family, whenever he shall become chargeable to the parish to which such certificate was given; and then, and not before, it shall be lawful for any such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed into the parish from whence such certificate was brought. And the 9 & 10 W. 3. c. 11. Eng. provides, that no person who shall come into any parish by certificate, shall be adjudged to have procured a legal settlement in such parish, unless he shall, *bona fide*, take a lease of a tenement of the value of £10. or shall execute some annual office in such parish, being legally placed in such office. And by the 12 Ann. st. 1. c. 18. Eng. if any person shall be an apprentice bound by indenture, or a hired servant, to any person who did come into or shall reside in any parish, &c. in England, by certificate, and not afterwards having gained a settlement, he shall not thereby gain any settlement. The 33 Geo. 3. c. 54. s. 24. Eng. also excludes apprentices and servants to certificated members of friendly societies. The English statutes 3 Car. 1. c. 4. s. 22. 5 Geo. 1. c. 8. 3 Geo. 2. c. 29. 17 Geo. 2. c. 3. 37 & 38. 9 Geo. 3. c. 37. 18 Geo. 3. c. 19 & 47. 20 Geo. 3. c. 36. 35 Geo. 3. c. 101. 36 Geo. 3. c. 23. 41 Geo. 3. c. 23. 42 Geo. 3. c. 46. and 45 Geo. 3. c. 54. also relate to this subject. The 22 Geo. 3. c. 83. Eng. (amended by the 33 Geo. 3. c. 35. 36 Geo. 3. c. 10. 41 Geo. 3. st. 1. c. 9. 42 Geo. 3. c. 74. and 43 Geo. 3. c. 110.

c. 110.) recites, that by the incapacity, negligence, or misconduct of overseers the money raised for the relief of the poor is frequently misapplied, and sometimes expended in defraying the charges of litigations about settlements indiscreetly and unadvisedly carried on; and therefore provides for establishing suitable and convenient poorhouses or workhouses in the several parishes and townships, under the inspection and controul of visitors, guardians, and governors, for the reception of such as are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour, and for such orphan children as are sent there by order of the guardians of the poor with the approbation of the visitor, and of such children also as shall necessarily go there with their mothers for sustenance. And this act contains the following rules and regulations to be observed and enforced at every poorhouse to be established under this act:—I. That the several persons who shall be sent to any such poorhouse, who are capable of doing any work, shall be employed by the governor in some labour which may be best suited to their strength and capacity.—II. That the governor shall take particular care to keep the said house and the several apartments therein, and also the several persons who shall inhabit the same, clean and wholesome; and for that purpose he shall employ such of the said poor persons who shall be sent thither, whom he shall think most able and best qualified for the offices, to assist him therein, and also in the providing and dressing victuals for the use of such poor persons; and if any such poor person shall refuse or neglect to perform the work or labour in which he or she shall be so employed, or shall be directed to do by the governor, every such person shall be punished by confinement, or a' teration of diet, in such manner as the governor shall direct; and for a second offence of the like sort complaint thereof shall be made to some justice of the peace for the limit, who on conviction shall commit such person to the house of correction for any time not exceeding 2 calendar months, nor less than 1 calendar month.—III. That the apartments in the house or houses to be provided as aforesaid, shall be adapted

22 Geo. 3.c. 33.
Eng.*Rules for regulation of poor houses.*

adapted so as to accommodate the poor who shall be sent thither in the best manner they are capable—That the governor shall place in the best apartments such poor persons who, having been creditable housekeepers, are reduced by misfortune, in preference to those who are become poor by vice and idleness; and that separate apartments shall be provided for the reception of the sick and distempered poor, and an apothecary or surgeon to be sent for to attend them when there shall appear necessity for it, at the expense of the parish or place to which such poor persons belong.—IV. That such poor persons who are able to work shall be called up by ring of bell, and set to work by 6 in the morning from Ladyday to Michaelmas, and by 8 from Michaelmas to Ladyday, and continue until 4 in the afternoon from Michaelmas to Ladyday, and from Ladyday to Michaelmas till 6 in the afternoon, (mealtimes and times for reasonable recreation excepted;) and if any such poor person shall refuse or neglect to do such work as shall be allotted him or her, or wilfully spoil the same, or depart from such house without leave from the governor, or shall be guilty of any disorder or disobedience to these rules and orders, the governor shall reprove such poor person for the same, and punish him or her by confinement or alteration of diet, as the said governor shall think fit; and if such person shall be guilty of the like offence a second time, the governor shall complain thereof to the visitor of such house, who is hereby authorized to order the punishment of confinement to be increased to such degree as he shall think fit.—V. That the governor shall enter in a book to be kept by him, an account of the household goods, linen, furniture, and utensils provided for the said house; and also an account of the materials bought for manufacture, and of the goods manufactured there; which shall be laid before the guardians at their monthly meeting, and before the visitor whenever he comes to such house.—VI. That the governor shall visit the several persons maintained in such house or houses, and their apartments once at least in every day; and shall take care that there is no waste of fire, candles, or provisions; and shall see that the fires and candles are put out at the hours fixed for

for such persons going to bed, which shall be at 8 of the clock between Michaelmas and Lady-day, and 9 between Lady-day and Michaelmas.—VII. That when any person shall die in the house, the governor shall take care that the body of such person be immediately removed into some separate apartment, and be decently buried as soon as conveniently may be; and also take care of the cloaths and goods of such person, and deliver them to the guardian of the poor of the parish or place to which such person did belong, who is to pay the charges of the funeral of such poor person.—VIII. That no poor person be permitted to go out of the poorhouse, nor any person permitted to come into such house or houses, except the persons maintained and employed there, without the permission of the governor; and that no spirituous liquors be permitted to be drunk in such house or houses; and that no other liquors shall be brought thither, without the permission of the said governor.—IX. That the rules, orders, and bye-laws shall be publicly read by the governor to all the poor persons kept in such house or houses, once at least in every month.—X. That all the poor persons able to go to church, shall attend divine service every Sunday.—XI. That the governor shall dismiss from the poorhouse, or workhouse, every person who shall in the opinion of the guardian or guardians, be thought improper to continue longer there, and upon an order from him or them for that purpose.

In Ireland, the subsistence of the poor appears to have depended upon the bounty of individuals for a much longer period than in England; for though in the reign of Henry VIII. an act was passed, adopting the numerous provisions of the English statute 22 Hen. 8. c. 12. for licensing the aged poor and impotent persons to beg, (as well as for punishing the vagabonds and mighty strong beggars), yet the humanity of the Irish legislature did not interfere to create any fund or to form any regular institution, for the maintenance of the indigent poor, till the 11 & 12 Geo. 3. c. 30. Ir. was passed, by which corporations were established for the purpose in every county, county of a city, and county of a town in Ireland; *Maintenance of poor in Ireland.* which

which are to consist, in counties, of the archbishop or bishop of the diocese, the representatives in parliament, and the justices of peace for such counties; and in counties of cities or counties of towns, of the chief magistrate, sheriffs, and recorder, as also the representatives in parliament, and justices of the peace for such county of a city or town, and persons subscribing £20., or £3. annually, are also declared to be members of such corporations. They are also authorized to elect such other residents during good behaviour as they shall think fit.

*Capacity to take
lands, &c.*

And each of these corporations is enabled to take by purchase, voluntary grant, or devise, any lands, &c. of inheritance, or for lives, not exceeding the yearly value of £500.; and also all such donations in personal property as shall be made to them, and to accept of all leases for years of houses or lands, so as no such lease shall exceed 21 years. And they are also authorized by

s. 3.

*Sites for houses
of industry.*

s. 3. to take by grant, or by devise, any quantity of ground within their counties respectively, not exceeding in a city or town 2 roods, plantation measure, or in the open country 20 acres of the like measure, for the sites of houses to be built for the reception of the helpless poor, and for keeping in restraint sturdy beggars and vagabonds. And these houses which, by s. 5. are re-

s. 5.

*Classification of
poor therein.*

quired to be built as soon as there should be sufficient funds for the purpose, are to be called workhouses or houses of industry, and to be divided into 4 parts, one for such poor helpless men as shall be judged worthy of admission; another part for poor helpless women; one other part for the reception of men who shall be committed as vagabonds or sturdy beggars, able or fit for labour; and the fourth part for such idle, strolling, disorderly women as shall be committed, and shall be found able or fit for labour. These corporations are autho-

s. 4.

*Licensed beg-
gars.*

rized and required, by s. 4. to grant to the helpless poor who have resided for one year within their respective counties, cities, or towns, badges or marks, of such materials and of such a stamp or impression as they shall think fit; and to grant to such helpless poor a license to beg in such barony, city, town, or parish, within their respective

respective counties, as they shall think fit, specifying the names and places of birth, and the characters of the persons so licensed, and whether reduced to that state by sickness or misfortune; and said corporations are authorized to license so many justices of the peace within their respective counties as they shall think fit, to deliver such badges and to grant such licenses. And this act (s. 7.) also provides for destitute children as well as for adult beggars, by empowering the persons granting licenses to beg, to include in them one or more of the children, under eight years of age, of such licensed beggars; and the committees of such corporations are further empowered to convey to the charter-school nurseries such of them as can be received, and to apprentice the rest. The provisions of this act for restraining and punishing idle and sturdy vagrants, and strolling prostitutes, will fall under consideration in another place. To create a fund for the support of these establishments, the grand juries of every county, &c. are by s. 9. authorized and required, at every spring assizes, to present in every county of a city or town, any sum not less than £100. nor more than £200. to be raised from off the lands and houses, and any sum not less than £200. nor more than £400. to be raised as aforesaid in every county at large. By the 23 & 24 Geo. 3. c. 58. Ir. a power is given to the judges of assize, upon proof before them upon oath of the insufficiency of the funds of any such corporation, to direct the grand juries to present a further sum not exceeding £100. And by the 46 Geo. 3. c. 95. I. in case it shall be made appear by any member of any such corporation, to the satisfaction of the judge of assize before whom the summer assizes shall be held in any year for any county, &c. in Ireland, that the corporation instituted under the 11 & 12 Geo. 3. (*supra*) is properly regulated and conducted, and that it is expedient to raise any greater sum than was limited by said former acts, for the maintenance of such institutions, or in case a house of industry is in the course of being built to defray the expense of building the same, it shall be lawful for the grand jury of such county, &c. to present any such sum as shall, together with the sums presented

s. 7.

Destitute children.

s. 9.

Presentments for support of these workhouses.

23 & 24 Geo. 3. c. 58. Ir.

46 Geo. 3. c. 95. I.

Wards for lunatics and idiots.

27 Geo. 3. c. 39. s. 8. Ir.

11 & 12 Geo. 3. c. 30. s. 11. Ir.

Foundlings.

11 & 12 Geo. 3. c. 15. Ir.
13 & 14 Geo. 3. c. 24. Ir.

presented under the said former acts, amount in any county of a city or town to a sum not less than £400.; nor more than £500; and in any county at large to a sum not less than £500. nor more than £700. And this act, s. 2. authorizes grand juries to present such sum not exceeding £100. to be raised off the county at large, as shall appear to be necessary, for the support of any lunatic asylum, or ward for the reception and support of idiots and insane persons, which shall be connected with or under the direction of any house of industry, if no presentment shall have been made under the 27 Geo. 3. c. 39. s. 8. Ir. which (as already stated, page 190), also empowered grand juries to present at the spring and summer assizes, such sum as should appear necessary for providing and supporting a ward or wards, in county infirmaries, for such idiots and insane persons as should be recommended by 2 magistrates of any such county, as being idiots, &c. and destitute of support. As a further means of supporting these workhouses or houses of industry, it is provided by the 11 & 12 Geo. 3. c. 30. s. 11. Ir. that the rectors, vicars, and incumbents of parishes, shall permit such clergymen of the established religion, as these corporations shall appoint, to preach sermons in their churches in every year, on such days as said corporations shall appoint, on behalf of these institutions, and to permit collections to be then made for these charitable purposes.

The 11 & 12 Geo. 3. c. 15. Ir. as amended by the 13 & 14 Geo. 3. c. 24. Ir. has also provided for the protection and support of poor exposed infants or foundlings, of the age of 12 months or under, by appointing overseers to be chosen in every parish, within the cities of Ireland, (except Dublin and Cork, which have their peculiar statutes) who are empowered to raise upon the respective parishes, such sums as shall be necessary for the maintenance and education of such children, not exceeding £5. for each child, to be raised like other parish cesses, and to be assessed upon the inhabitants in such cities according to the value of their houses. And such foundling tax may be raised by presentment at the next assizes after any default of any parish.

The

The Irish legislature has also humanely provided by the 5 Geo. 3. c. 20. Ir. (which is amended by the 36 Geo. 3. c. 9. Ir.) for the establishment of hospitals or infirmaries in the several counties of Ireland, by erecting corporations, to consist of the primate, lord chancellor, bishop of the diocese, and the rector or vicar of the parish, as also of donors of any sum not less than 20 guineas, and of such persons as shall annually subscribe and pay 3 guineas; which several corporations are to be called the governors and governesses of the respective county infirmaries or hospitals, and are declared capable of purchasing, taking or receiving any lands, &c. not exceeding the annual value of £200. and benefactions to any amount in personal property: and the grand juries of the respective counties are by s. 6. empowered to present any sum not exceeding £100. nor under £50. which sums are to be raised upon each county at large, and to be applied by the governors and governesses in providing food, medicines, and other necessities for the patients, in repairing the respective buildings and furniture thereof, and in paying the rents of the several infirmaries or hospitals. By the 47 Geo. 3. st. 2. c. 50. I. the provisions of the 5 Geo. 3. c. 20. Ir. are extended to counties of cities and counties of towns, in respect to which no special provision is made by any act. And the 45 Geo. 3. c. 111. I. has further provided, that it shall be lawful for the grand jury of every county in Ireland to present to be raised on the county at large, a sum not exceeding £500. in the year, over and above the sum which they are empowered to present by the 5 Geo. 3. (*supra*), for the support and maintenance of each county infirmary, provided however that a like affidavit and account by the physician and treasurer, as is required, by the 25 Geo. 3. c. 39. Ir. of the number of patients received and relieved, and of the state of the funds and expenses of the infirmary, shall be laid before the grand jury previous to any such presentment. And by the 47 Geo. 3. st. 1. c. 44. I. the grand jury of any county, &c. in Ireland may, at any spring or summer assizes, present such sum, not exceeding £100. as shall be necessary for the support of any fever

County infirmaries or hospitals.

5 Geo. 3. c. 20. Ir.
36 Geo. 3. c. 9. Ir.

Corporation of governors and governesses.

s. 6.

Presentments for these institutions.

47 Geo. 3. st. 2. c. 50. I.

45 Geo. 3. c. 111. I.

25 Geo. 3. c. 39. Ir.

47 Geo. 3. st. 1. c. 44. I.

Fever hospitals

46 Geo. 3. c. 95.
s. 6. & 8. 1.

*Accounts of in-
firmaries to be
laid before com-
missioners of
imprest accounts.*

45 Geo. 3. c. 111.
s. 3. 1.

*County dispen-
saries.*

s. 4.

fever hospital in such county, &c. to be raised off the county at large. The commissioners of imprest accounts are authorized by the 46 Geo. 3. c. 95. s. 6. & 8. I. to exercise all such powers for obtaining of the accounts, statements, and returns by this act, (s. 6.) required to be made, relating to the several infirmaries and hospitals in Ireland, and in examining and stating the accounts of the receipt and expenditure, and of the debts and credits of such infirmaries and hospitals, as are vested in said commissioners by the 23 & 24 Geo. 3. c. 26. I. The 45 Geo. 3. c. 111. s. 3. I. recites that the distance of many parts of each county from the infirmary therein established, does not allow to the poor of those parts the advantages which the infirmary was proposed to afford, and enacts that where any such corporation shall certify to the grand jury of the county, that they have received from private subscription or donation, any sum since the preceding assizes, for the purpose of establishing in any town or place therein, a dispensary for furnishing medicine and giving medical aid to the poor, it shall be lawful for such grand jury to present to be raised on the county at large, a sum equal to the sum so received, to be applied in providing medicines or medical or surgical aid for the poor of such town or place and its neighbourhood, in such manner as the governors and governesses, or a committee of them not fewer than 5, appointed at a quarterly meeting, shall deem most advisable, and all monies so raised by presentment, or received from private subscription, &c. shall be accounted for upon oath at each summer assizes. And by s. 4. every subscriber of one guinea toward the establishment or maintenance of any such local dispensary, or towards the county hospital or infirmary, shall be a member of the body corporate for the infirmary of such county for one year from such payment, so far as relates to the management and direction of such local dispensary.

CHAP. X.

Of the People, whether Aliens, Denizens, or Natives.

THE classification of the people into aliens, denizens, and natives, leads to the consideration of the statutes, which prescribe certain forms of oaths and declarations to be taken and subscribed by the several classes of aliens and native subjects, as tests of fidelity to the king, and as renunciations of tenets and principles hostile to the settlement of the crown, and subversive of the protestant religion and government; and which were calculated also to confine the offices of trust and power to those, who were conceived to be best disposed to uphold the establishments in church and state.

The present form of the oath of allegiance, as established by the 1 Geo. 1. st. 2. c. 13. Eng. was taken from the 1 W. & M. st. 1. c. 8. Eng. which abrogated the old oath, as prescribed by the 3 Jac. 1. c. 4. Eng. and is in the following words: "I, *A. B.* do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George. So help me God."

The oath of abjuration was first required to be taken in England by the 13 W. 3. c. 6. Eng. but was afterwards altered by the 1 Ann. st. 1. c. 22. 5 Ann. c. 8. 6 Ann. c. 7. 1 Geo. 1. st. 2. c. 13. and was settled by the 6 Geo. 3. c. 53. Eng. according to its present form, viz. "I, *A. B.* do truly and sincerely acknowledge, profess, testify, and declare, in my conscience, before God and the world, that our sovereign lord king George is lawful and rightful king of this realm, and all other his majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person, who pretended to be prince of Wales during the life of the late king James the second, and since his decease pretended to be, and took upon himself the stile and title of, king of England, by the name of

“ James the third, or of Scotland, by the name of James
 “ the eighth, or the stile and title of king of Great Bri-
 “ tain, hath any right or title whatsoever to the crown
 “ of this realm, or any other the dominions thereunto
 “ belonging: and I do renounce, refuse, and abjure,
 “ any allegiance or obedience to any of them. And I
 “ do swear, that I will bear faith and true allegiance to
 “ his majesty king George, and him will defend to the
 “ utmost of my power, against all traitorous conspiracies
 “ and attempts whatsoever, which shall be made against
 “ his person, crown, or dignity. And I will do my ut-
 “ most endeavour to disclose and make known to his ma-
 “ jesty, and his successors, all treasons and traitorous
 “ conspiracies, which I shall know to be against him, or
 “ any of them. And I do faithfully promise to the ut-
 “ most of my power, to support, maintain, and defend
 “ the succession of the crown, against the descendants of
 “ the said James, and against all other persons what-
 “ soever, which succession, by an act, intituled, “ An act
 “ for the further limitation of the crown, and better se-
 “ curing the rights and liberties of the subject,” is and
 “ stands limited to the princess Sophia, electress and
 “ duchess dowager of Hanover, and the heirs of her
 “ body being protestants. And all these things I do
 “ plainly and sincerely acknowledge and swear, accord-
 “ ing to these express words by me spoken, and accord-
 “ ing to the plain common sense and understanding of
 “ the same words, without any equivocation, mental
 “ evasion, or secret reservation whatsoever. And I do
 “ make this recognition, acknowledgment, abjuration,
 “ renunciation, and promise, heartily, willingly, and
 “ truly, upon the true faith of a christian.”

Oath of supre-
macy.

1 W. & M. st. 1.
c. 8. Eng.

The oath of supremacy, which was first appointed
 to be taken in the reign of Henry VIII. and after-
 wards modified in the reign of Elizabeth, was finally
 settled by the 1 W. & M. st. 1. c. 8. Eng. according to
 its present form, viz. “ I, *A. B.* do swear, that I do
 “ from my heart abhor, detest, and abjure, as impious
 “ and heretical, that damnable doctrine and position,
 “ that princes excommunicated or deprived by the pope,
 “ or

“ or any authority of the see of Rome, may be deposed
 “ or murdered by their subjects, or any other, what-
 “ soever. And I do declare that no foreign prince, per-
 “ son, prelate, state, or potentate, hath or ought to have
 “ any jurisdiction, power, superiority, pre-eminence, or
 “ authority, ecclesiastical or spiritual, within this realm.
 “ So help me God.”

By the 1 Geo. 1. st. 2. c. 13. Eng. as amended by the
 2 Geo. 2. c. 31. Eng. 9 Geo. 2. c. 26. Eng. and 6 Geo. 3.
 c. 53. Eng. every person that shall bear any office, civil
 or military, or shall receive any pay, salary, fee, or wages,
 by patent or grant from his majesty; or shall have any
 command or place of trust under his majesty, or by his
 authority, in Great Britain, or in the navy, or in Jersey
 or Guernsey, or shall be of the household, or in the
 service or employment of his majesty; and all ecclesias-
 tical persons, heads and other members of colleges and
 halls in any university that are of the foundation, or en-
 joy any exhibition, being of the age of 18 years; and
 all persons teaching or reading to pupils, and all school-
 masters and ushers, and preachers and teachers of se-
 parate congregations; all constables, and every serjeant
 at law, counsellor at law, barrister, advocate, attorney,
 solicitor, (writer in Scotland) proctor, clerk or notary,
 practising in any court, shall take the oaths of allegiance,
 abjuration and supremacy, in Ch. K. B. C. B. or Exc. at
 Westminster, or at the quarter sessions of the county,
 &c. where such person shall be or reside, at any time
 within 6 calendar months * after he shall be ad-
 mitted into, or enter upon any such preferment, &c.
 or come into such capacity, or take upon him such
 practice, &c. and every person taking the same shall
 subscribe his name, or if he cannot write make his mark,
 and during the time of taking said oaths, all pleas and
 proceedings shall cease. But persons beyond the seas
 may, by the 9 Geo. 2. c. 26. s. 4. Eng. take and subscribe said
 oaths, within 6 calendar months after their return to or
 arrival in England. The 1 Geo. 1. st. 2. c. 13. Eng.
 is declared (by s. 20.) not to extend to the office of
 tithingman, headborough, overseer of the poor, church-
 warden,

*Oaths, by whom
to be taken.*

1 Geo. 1. st. 2.
c. 13. Eng.
2 Geo. 2. c. 31.
Eng.
9 Geo. 2. c. 26.
Eng.
6 Geo. 3. c. 53.
Eng.

When and where

9 Geo. 2. c. 26.
s. 4. Eng.

*Persons beyond
the seas.*

1 Geo. 1. st. 2.
c. 13. s. 20. Eng.

*Inferior offices
excepted.*

s. 18. warden, surveyor of the highways, or any like inferior civil office; or to the office of forester, or keeper of any park, chase, warren, or game, or bailiff of any manor or lands, nor to any such private offices. And by s. 18. offices of inheritance are also excepted, in case a deputy shall be substituted, who shall take the oaths prescribed by this act, and also qualify himself according to the 25 Car. 2. c. 2. (*vide post*) and so as such deputy shall be approved of by the king under his privy signet.

Offices of inheritance.

s. 9. By s. 9. the proper officer shall have of every person taking and subscribing said oaths, 2s.; and a register of the names of all persons who shall take, &c. said oaths, is thereby required to be kept in a book, and of the time when they took &c. the same, to which any person may resort: but by s. 31. no seaman or soldier, under the degree of a commission or warrant officer, shall pay any fee on taking the oaths. And by s. 7. all persons, that shall neglect or refuse to take said oaths and subscribe thereto, shall be incapable to enjoy such offices, &c. or any profit appertaining to them, and every such office, &c. shall be void: but by s. 14. any person who shall so lose or forfeit any office, shall be capable of a new grant of such office, or of any other, upon taking and subscribing said oaths, so as such office be not granted or enjoyed by some person at the time of regranting thereof.

s. 31.

s. 7.

Offices void for neglect, &c. to take oaths.

s. 14.

Declaration
against transub-
stantiation.

25 Car. 2. c. 2.
Eng.
9 Geo. 2. c. 26.
Eng.

By the 25 Car. 2. c. 2. Eng. as amended by the 9 Geo. 2. c. 26. Eng. every person that shall be admitted into any office, civil or military, or receive any pay, salary, fee or wages, by reason of any patent or grant of his majesty, or have any command or place of trust, under or by authority of the king, in England, Wales, or Berwick upon Tweed, or in the navy, or in Jersey or Guernsey, or be in any service or employment in his majesty's household or family, and reside within the cities of London or Westminster, or within 30 miles of the same, shall make and subscribe the following declaration against transubstantiation, viz. "I, *A. B.* do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord's supper, or in the elements of bread and wine, at or after the consecration

“secration thereof by any person whatsoever;” which declaration is to be made at the same places and times as above limited by the 9 Geo. 2. c. 26. for taking and subscribing the oaths of allegiance, abjuration, and supremacy. And by the 25 Car. 2. c. 2. s. 2. as amended by the 16 Geo. 2. c. 30. s. 3. Eng. the several persons above enumerated, (except those of the household, &c.) are further required to receive the sacrament of the Lord’s supper according to the usage of the church of England, within 6 months after their admittance in, or receiving any such authority or employment, in some public church, upon some Sunday immediately after divine service and sermon. And by the 25 Car. 2. c. 2. s. 3. Eng. every of the said persons in the respective court where he takes the said oaths, shall first deliver a certificate of his receiving the sacrament, under the hands of the respective minister and churchwarden, and shall then make proof of the truth thereof by 2 witnesses upon oath, which shall be put upon record in the respective courts: and by s. 10. the like register shall be kept of the making and subscribing the declaration against transubstantiation. By s. 4. every person that shall neglect or refuse to take the sacrament, &c. shall be disabled to have or enjoy any of said offices or employments, or any profit appertaining thereto, and every such office shall be void: but by s. 14. such person shall be capable of a new grant of such office or any other, upon taking the sacrament, &c. as required by this act, so as such office be not granted to and actually enjoyed by some other person at the time of regranting thereof. This act is declared (by s. 11.) not to extend to offices of inheritance, so as the person enjoying any such office shall appoint a sufficient deputy, who should take the oaths, receive the sacrament, and subscribe the said declaration, in manner as officers are by this act appointed to do, and so as such deputies shall be approved of by the king under his privy signet. This act contains the same exception (s. 17.) as to inferior civil offices and private offices as the 1 Geo. 1. st. 2. c. 13. *supra*; but includes also high and petty constables: and by

16 Geo. 2. c. 30.
s. 3. Eng.*Sacrament to be
received.*25 Car. 2. c. 2.
s. 3. Eng.

s. 10.

s. 4.

*Offices void for
neglect, &c.*

s. 14.

s. 11.

Exceptions.

s. 17.

s. 15.

by s. 15. non-commission officers in the navy, are excepted, provided they shall only subscribe the declaration against transubstantiation as above required.

*Qualification
for offices in
Ireland.*

2 Ann. c. 6. s. 17.
Ir.

By the 2 Ann. c. 6. s. 17. Ir. every person that shall be admitted, &c. into any office, civil or military, or that shall receive any pay, salary, fee or wages, belonging to or by reason of any office or place of trust, by patent or grant from the crown, or have command or place of trust from or under or by authority of the crown, is required to take and subscribe the oaths of allegiance and supremacy, (prescribed for Ireland by the 3 W. & M. c. 2. Eng.) and the oath of abjuration, (contained in the 1 Ann. st. 1. c. 22. Eng.) and to make, repeat, and subscribe the declaration against transubstantiation, the invocation of saints, and the sacrifice of the mass,* (also appointed to be made by the said statute 3 W. & M. c. 2. Eng.) which oaths and declaration such persons are required to take, make and subscribe, or put their marks to, in Ch. K. B. C. B. or Exc. in the next term, or at the next quarter sessions for the county, &c. where he shall reside, after his admittance into

* *Ante page
140.*

1 Geo. 2. c. 2. s. 3.
Ir.

such office, (or by the 1 Geo. 2. c. 2. s. 3. Ir. in the same term or sessions) between the hours of 9 and 12 in the forenoon, during which time all proceedings shall cease: and every person so to be admitted as aforesaid, shall also receive the sacrament of the Lord's supper according to the usage of the church of Ireland, within 3 months after such admittance, &c. in some public church, upon some Sunday immediately after divine service and sermon; and every such person is also required previous to taking such oaths to deliver a certificate of his receiving the sacrament, under the hands of the minister and churchwardens, and make proof of the truth thereof by 2 witnesses upon oath: all which shall be inquired of and put upon record in the respective courts. And by s. 19. the names of the persons taking said oaths, &c. are required to be inrolled with

s. 19.

*Names of per-
sons taking oath,
&c. inrolled.*

the day and year of their taking, &c. the same, in rolls to be kept for that purpose, the fee for which entry, or taking the oaths, is thereby limited to 6d. This act also contains

provisions

provisions similar to those of the 25 Car. 2. c. 2. Eng. and s. 18 & 21.
 1 Geo. 1. st. 2. c. 13. Eng. declaring all such offices
 void in case of neglect or refusal to perform these se- *Offices void for
 neglect, &c.*
 veral requisites, and enabling such persons to take a new
 grant thereof: and contains also the same exception
 (s. 22.) of inferior civil offices and private offices, in- s. 22.
 cluding high and petit constables: and also excepts of- *Exceptions.*
 fices of inheritance, where the deputies shall be protest-
 ants duly qualified, and approved of by the crown, or
 chief governor of Ireland. This section of the act en-
 ables persons in England to take the oaths, and make and
 subscribe the declaration, in one of the courts at West-
 minster, or at the quarter sessions for the county or place
 where they shall reside, inhabit, or be, and to receive
 the sacrament according to the usage of the church of
 England, and produce the certificate thereof within the
 time limited for performing the same in Ireland: and
 persons beyond the seas, or on board the fleet, are there-
 by also allowed 4 months after their return into England
 or Ireland to perform these requisites: and this clause
 also contains a saving for persons under the age of 18,
 or found by inquisition to be *non compos mentis*, who are
 enabled to qualify as aforesaid within 4 months after
 their coming to said age, or becoming of sound mind.

It is observable, that the oaths of allegiance and su- *English statutes
 respecting oaths,
 adopted in Ire-
 land.*
 premacy were required to be taken in Ireland, by the
 English statute 3 W. & M. c. 2. Eng. which enacted (s. 4.)
 that every barrister, attorney, clerk or officer in chan- 3 W. & M. c. 2.
 cery, or any other court, and their deputies, or prac- Eng.
 tising as such in Ireland, and all persons admitted into
 any office or employment, ecclesiastical or civil, in
 Ireland, should take the same form of the oaths of
 allegiance and supremacy, as were framed by the 1
 W. & M. st. 1. c. 8. Eng. as also the same declaration
 against transubstantiation, invocation of saints, and the sa-
 crifice of the mass,* as was prescribed (for members of
 parliament) by the 30 Car. 2. st. 2. Eng. And by the
 1 Ann. st. 2. c. 17. s. 5 & 6. Eng. all officers, civil 1 Ann. st. 2.
 and military, and all ecclesiastical persons, and every c. 17. s. 5 & 6.
 Eng.
 * master,

* The word "believing" is substituted for the word "thinking" *vide* p. 140.
 line 23.

master, governor, head, or fellow of the university of Dublin, and all persons teaching pupils in said university, or elsewhere, and all schoolmasters or ushers, and all preachers and teachers of separate congregations, and every person acting as serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, in any court, are required to take and subscribe the oath of abjuration (as altered by the 1 Ann. st. 1. c. 22. Eng.) in the next term after being admitted into, or entering upon any of the said preferments, offices, or capacities, in the court of Ch. K. B. C. B. or Exc. or at the next general quarter sessions for the county, &c. where any such person shall reside, under such penalties in case of neglect or refusal as contained in the 13 W. 3. c. 6. Eng. But by s. 7. persons in England, or in his majesty's service on board the fleet, are to take said oath, in the term or at the quarter sessions next after their return into Ireland. This act contains also provisions (s. 9 & 12.) corresponding to those of the 25 Car. 2. c. 2. s. 17. Eng. *ante* p. 293. and 1 Geo. 1. st. 2. c. 13. s. 14. Eng. *ante* p. 292. The 1 Geo. 1. st. 2. c. 13. Eng. and 6 Geo. 3. c. 53. Eng. which modified the oaths of allegiance and abjuration according to their present form, and the 9 Geo. 2. c. 26. Eng. which prescribed a new limit or time for taking these oaths, were also declared to extend to Ireland. These several statutes are adopted in Ireland by the 21 & 22 Geo. 3. c. 48. s. 3. Ir.*

The 25 Car. 2. c. 2. Eng. has not been dispensed with in England by any permanent law in favour of protestant dissenters, so far as respects their qualification for offices, save that the Toleration Act, 1 W. & M. st. 1. c. 18. Eng.* enacts (s. 7.) that if any person dissenting from the church of England, shall be chosen or appointed to bear the office of high constable, or petit constable, church-warden, overseer of the poor, or any other parochial or ward-office, and such person shall scruple to take upon him any of the said offices, in regard of the oaths or any other matter required by law to be taken or done in respect of such office, such person may execute such office or employment by a sufficient deputy

s. 7. 9 & 18.

1 Geo. 1. st. 2. c. 13. Eng.

9 Geo. 2. c. 26. s. 37. Eng.

6 Geo. 3. c. 53. Eng.

21 & 22 Geo. 3. c. 48. s. 3. Ir.

*Vide p. 143.

Exception in favour of protestant dissenters.

1 W. & M. st. 1. c. 18. s. 7. Eng.

† The 6 Geo. 1. c. 5. s. 4. Ir. contains a similar clause.

deputy that shall comply with the laws in this behalf; but such deputy shall be allowed and approved by such person, in such manner, as such officer should by law have been allowed and approved. But in Ireland the 19 & 20 Geo. 3. c. 6. Ir. has repealed the clause of the 2 Ann. c. 6. Ir. which relates to the taking of the sacrament of the Lord's supper, according to the usage of the church of Ireland, so far as respects protestant dissenters; and for this purpose enacts, that every person being protestant, may have, hold, and enjoy any office civil or military, and receive any pay, &c. belonging to or by reason of such office, notwithstanding he shall not receive or have received the sacrament, as prescribed by said clause, without incurring the penalties in said act or in any other act, for or in respect of such neglect. But this act is declared by the 33 Geo. 3. c. 51. Ir. to extend to protestant dissenters only, and not to protestants of the church of Ireland. With respect to quakers, the declaration of fidelity prescribed for them by the 8 Geo. 1. c. 6. Eng. comprehends in substance the oaths of allegiance and supremacy: and this act also prescribes a declaration for quakers of the effect of the oath of abjuration; which declarations entitle them to the benefits of the Toleration Act, 1 W. & M. st. 1. c. 18. but do not qualify them for holding offices. And the 8 Geo. 1. c. 6. as explained by the 22 Geo. 2. c. 47. s. 36. & 37. Eng. which enables quakers in all cases where an oath is required by law, to make an affirmation or declaration instead thereof, expressly provides, (s. 6.) that nothing therein shall enable them to bear any office of profit in the government. The 19 Geo. 2. c. 18. Ir. prescribes the same form of affirmation to be made by quakers, in cases where an oath is required, as that contained in the 8 Geo. 1. c. 6. Eng. and provides also that they shall not be thereby admissible to bear places of trust or profit under the government. And the 21 & 22 Geo. 3. c. 57. Ir. which enables that class of dissenters called seceders, to take an oath in a particular mode and form, contains the same exception.

19 & 20 Geo. 3.
c. 6. Ir.

*Disabilities of
dissenters in
Ireland removed*

33 Geo. 3. c. 51.
Ir.

*Quakers dis-
abled to hold
offices.*

8 Geo. 1. c. 6.
Eng.

22 Geo. 2. c. 47.
s. 36-7. Eng.

19 Geo. 2. c. 18.
s. 3. Ir.

21 & 22 Geo. 3.
s. 57 Ir.

*Seceders al-
disabled.*

*Catholics in
England may
hold inferior ci-
vil, or private of-
fices.*

With respect to Roman catholics, the 31 Geo. 3. c. 32. Eng. enacts, that it shall be lawful for any such person personally to appear in any of the courts of Ch. K. B.

C. B.

31 Geo.3. c.32. C. B. or Exc. at Westminster, or at the quarter sessions for the county, &c. where such person shall reside, and there in open court between the hours of 9 in the morning and 2 in the afternoon, take, make, and subscribe the following declaration and oath, viz. :—

Declaration. “ I, *A. B.* do hereby declare, that I profess the Roman catholic religion.”

Oath. “ I, *A. B.* do sincerely promise and swear, that I will
 “ be faithful and bear true allegiance to his majesty
 “ king George the third, and him will defend to the ut-
 “ most of my power, against all conspiracies and at-
 “ tempts whatever that shall be made against his person,
 “ crown, or dignity; and I will do my utmost endea-
 “ vour to disclose and make known to his majesty, his
 “ heirs, and successors, all treasons and traitorous con-
 “ spiracies which may be formed against him or them.
 “ And I do faithfully promise to maintain, support, and
 “ defend, to the utmost of my power, the succession of
 “ the crown; which succession, by an act intituled ‘ An
 “ act for the further limitation of the crown, and better
 “ securing the rights and liberties of the subject,’ is
 “ and stands limited to the princess Sophia, electress
 “ and duchess dowager of Hanover, and the heirs of her
 “ body being protestants; hereby utterly renouncing and
 “ abjuring any obedience or allegiance unto any other
 “ person claiming or pretending a right to the crown of
 “ these realms. And I do swear that I do reject and de-
 “ test, as an unchristian and impious position, that it is
 “ lawful to murder or destroy any person or persons
 “ whatsoever, for or under pretence of their being he-
 “ reticks or infidels; and also that unchristian and impious
 “ principle, that faith is not to be kept with hereticks or
 “ infidels; and I further declare that it is not an article
 “ of my faith, and that I do renounce, reject, and ab-
 “ jure the opinion, that princes excommunicated by the
 “ pope and council, or any authority of the see of Rome,
 “ or by any authority whatsoever, may be deposed or
 “ murdered by their subjects, or any person whatsoever:
 “ and I do promise that I will not hold, maintain, or
 “ abet any such opinion, or any other opinions contrary
 “ to

“ to what is expressed in this declaration. And I do de-
“ clare, that I do not believe that the pope of Rome, or
“ any other foreign prince, prelate, state, or potentate
“ hath, or ought to have, any temporal or civil jurisdic-
“ tion, power, superiority, or pre-eminence, directly or
“ indirectly, within this realm. And I do solemnly, in
“ the presence of God profess, testify, and declare, that
“ I do make this declaration, and every part thereof, in
“ the plain and ordinary sense of the words of this oath,
“ without any evasion, equivocation, or mental reserva-
“ tion whatever, and without any dispensation already
“ granted by the pope, or any authority of the see of
“ Rome, or any person whatever; and without thinking
“ that I am or can be acquitted before God or man, or
“ absolved of this declaration, or any part thereof, al-
“ though the pope or any other person or authority
“ whatsoever shall dispense with or annul the same, or
“ declare that it was null or void.—So help me God.”

Which declaration and oath shall be subscribed by the person taking and making the same, with the name at length, if he can write, or with his mark, the name being written by the officer, where such person cannot write, such person or such officer adding the title, addition, and place of abode of such person, and shall remain in such court of record: and the proper officer shall make, subscribe, and deliver a certificate of such declaration and oath having been duly made, &c. if demanded, for which certificate 2s. shall be the fee; and such certificate, upon proof of the certifier's hand, and that he acted as such officer, shall be sufficient evidence of such person's having duly made, &c. such declaration and oath, unless the same shall be falsified. And such officer shall (by s. 2.) yearly, on or before the 25th December, transmit to the clerk of the privy council, lists of the persons, with their titles, additions, and places of abode, who shall have made and subscribed such declaration and oath in the preceding year. And this act contains a clause, enabling catholics to execute the offices of constable, &c. by deputy, similar to that of the 1 W. & M. c. 18. *supra*, in favour of protestant dissenters.

And

*Irish Catholics
excluded only
from certain of-
fices.*

33 Geo. 3. c. 21.
s. 7. Ir.

s. 8.

s. 13.

s. 14.

*Oath prescribed
by the 13 & 14
Geo. 3. c. 35. Ir.*

And for the relief of the Roman catholics of Ireland, the 33 Geo. 3. c. 21. Ir. enacts that papists or persons professing the popish or Roman catholic religion, may hold, exercise, and enjoy all civil and military offices, or places of trust or profit, under the crown in Ireland, and hold or take degrees or any professorship in, or be masters or fellows of, any college to be hereafter founded; provided that such college shall be a member of the university of Dublin,* and not founded exclusively for the education of papists, &c. nor consist exclusively of masters, fellows, or other persons to be named or elected on the foundation of such college, being persons professing the popish religion; or to hold any office or place of trust in, and to be a member of, any body corporate, except Trinity College, Dublin, without taking and subscribing the oaths of allegiance, supremacy, or abjuration, or making or subscribing the declaration required to be taken to enable any person to hold and enjoy any of said places, and without receiving the sacrament of the Lord's supper according to the rites and ceremonies of the church of Ireland. And by s. 8. papists, &c. are further declared capable of being elected professors of medicine upon the foundation of Sir Patrick Dunn. And to remove the obstacles that existed to prevent papists, &c. from entering into, or taking degrees in, the university of Dublin, the 13th section of this act provides, that it shall not be necessary for any person upon taking any of the degrees usually conferred by said university, to make or subscribe any declaration, or to take any oath, save the oaths of allegiance and abjuration. But this act provides (s. 14.) that no papist, &c. shall have any benefit of this act who shall not have first taken and subscribed the oath framed by the 13 & 14 Geo. 3. c. 35. Ir. viz. :—
 “ I, *A. B.* do take Almighty God, and his only son Jesus
 “ Christ my redeemer, to witness, that I will be faithful
 “ and bear true allegiance to our most gracious sovereign
 “ lord king George the third, and him will defend to the
 “ utmost of my power, against all conspiracies and at-
 “ tempts whatever, that shall be made against his person,
 “ crown, and dignity; and I will do my utmost endea-
 your

*Maynooth College since established by 35 Geo. 3. c. 21. Ir.

“ your to disclose and make known to his majesty, and
“ his heirs, all treasons and traitorous conspiracies, which
“ may be formed against him or them; and I do faith-
“ fully promise to maintain, support, and defend, to the
“ utmost of my power, the succession of the crown in his
“ majesty’s family against any person or persons whatso-
“ ever; hereby utterly renouncing and abjuring any
“ obedience or allegiance unto the person taking upon
“ himself the stile and title of Prince of Wales in the
“ lifetime of his father, and who, since his death, is said
“ to have assumed the stile and title of King of Great
“ Britain and Ireland, by the name of Charles the third,
“ and to any other person claiming or pretending a right
“ to the crown of these realms. And I do swear that I
“ do reject and detest as unchristian and impious to be-
“ lieve, that it is lawful to murder or destroy any person
“ or persons whatsoever, for or under pretence of their
“ being hereticks; and also that unchristian and impi-
“ ous principle, that no faith is to be kept with hereticks.
“ I further declare that it is no article of my faith, and
“ that I do renounce, reject, and abjure the opinion,
“ that princes excommunicated by the pope and council,
“ or by any authority of the see of Rome, or by any au-
“ thority whatsoever, may be deposed or murdered by
“ their subjects, or by any person whatsoever: and I do
“ promise that I will not hold, maintain, or abet any
“ such opinion, or any other opinion contrary to what is
“ expressed in this declaration. And I do declare that
“ I do not believe that the pope of Rome or any other
“ foreign prince, prelate, state or potentate hath or
“ ought to have any temporal or civil jurisdiction, power,
“ superiority or pre-eminence, directly or indirectly,
“ within this realm. And I do solemnly in the presence
“ of God, and of his only son Jesus Christ my redeemer,
“ profess, testify, and declare, that I do make this de-
“ claration, and every part thereof, in the plain and or-
“ dinary sense of the words of this oath, without any
“ evasion, equivocation, or mental reservation whatever,
“ and without any dispensation already granted by the
“ pope, or any authority of the see of Rome, or any
“ person

“ person whatever; and without thinking that I am or can
 “ be acquitted before God or man, or absolved of this
 “ declaration or any part thereof, although the pope, or
 “ any other person or persons or authority whatsoever,
 “ shall dispense with or annul the same, or declare that it
 “ was null and void from the beginning.—So help me
 “ God.” And in order to entitle themselves to the be-
 nefits of this act, papists, &c. are also required to take,
 make, and subscribe the following declaration and oath:

*Declaration and
 oath prescribed
 by 33 Geo. 3.
 c. 21. Ir.*

“ I, *A. B.* do hereby declare, that I do profess the
 “ Roman catholic religion.”

“ I, *A. B.* do swear, that I do abjure, condemn, and
 “ detest, as unchristian and impious, the principle that
 “ it is lawful to murder, destroy, or any ways injure any
 “ person whatsoever, for or under the pretence of being
 “ an heretick; and I do declare solemnly before God,
 “ that I believe that no act in itself unjust, immoral,
 “ or wicked, can ever be justified or excused by or
 “ under pretence or colour that it was done, either for
 “ the good of the church, or in obedience to any eccle-
 “ siastical power whatsoever. I also declare that it is not
 “ an article of the catholic faith, neither am I thereby
 “ required to believe or profess that the pope is infallible,
 “ or that I am bound to obey any order in its own nature
 “ immoral, though the pope or any ecclesiastical power
 “ should issue or direct such order, but on the con-
 “ trary I hold that it would be sinful in me to pay any
 “ respect or obedience thereto. I further declare that
 “ I do not believe that any sin whatsoever committed
 “ by me, can be forgiven at the mere will of any pope,
 “ or of any priest, or of any person or persons whatso-
 “ ever; but that sincere sorrow for past sins, a firm and
 “ sincere resolution to avoid future guilt, and to atone to
 “ God, are previous and indispensable requisites to es-
 “ tablish a well founded expectation of forgiveness; and
 “ that any person who receives absolution without these
 “ previous requisites, so far from obtaining thereby any
 “ remission of his sins, incurs the additional guilt of vio-
 “ lating a sacrament. And I do swear that I will defend
 “ to the utmost of my power, the settlement and ar-
 “ rangement of property in this country, as established

“ by

“ by the laws now in being. I do hereby disclaim, dis-
 “ avow, and solemnly abjure any intention to subvert the
 “ present church establishment, for the purpose of sub-
 “ stituting a catholic establishment in its stead; and I do
 “ solemnly swear that I will not exercise any privilege to
 “ which I am or may become entitled, to disturb and
 “ weaken the protestant religion and protestant govern-
 “ ment in this kingdom.—So help me God.” These

oaths and declaration are by the 33 Geo. 3. c. 21. s. 14. required to be taken and subscribed in some one of the four courts in Dublin, or at the general sessions of the peace, or at any adjournment thereof, to be holden for the county, city, or borough, where such papist, &c. doth inhabit or dwell, or before the going judge of as-

size for such county, &c. And this act also provides (s. 15.) that the names of such persons as shall so take and subscribe the said oaths and declaration, with their titles and additions, shall be entered upon rolls for that purpose to be appointed by the respective courts; and said rolls shall once in every year be transmitted to, and deposited in, the rolls-office in Ireland; and the master or keepers of the rolls and their deputies* are required to grant certificates of the said oaths and declaration being taken and subscribed, for each of which certificates 1s. and no more shall be taken. But by s. 9. this act shall not

s. 15.

s. 9.

extend to enable any person to sit or vote in either house of parliament, or to hold exercise or enjoy the office of lord lieutenant of Ireland, or lord chancellor or commissioner of the great seal, or lord high treasurer or chancellor of the exchequer, chief justice or justices of K. B. or C. B. chief baron or baron of Exc. or judge of the court of admiralty, or master of the rolls, secretary of state, keeper of the privy seal, vice treasurer or deputy vice treasurer, teller and cashier of the exchequer, auditor general, lieutenant or governor or *custos rotulorum* of counties, secretary to the lord lieutenant, member of the privy council, prime serjeant, attorney general, solicitor general, second and third serjeants at law, or king's council,

Excepted offices.

* By the 34 Geo. 3. c. 22. Ir. the proper officer of the court wherein any catholic shall qualify, is to grant a certificate forthwith, (fee 1s.) on pain of £20. to be recovered by civil bill.

council, master in chancery, provost or fellow of Trinity college, Dublin, postmaster-general, master and lieutenant general of the ordnance, commander-in-chief, generals on the staff, sheriff or sub-sheriff of any county, or any office contrary to the new rules for corporations established by the privy council pursuant to the 17 & 18 Car. 2. Ir. unless such person shall have taken, made, and subscribed the oaths and declaration, and performed the several requisites *then* required by law.

*Aliens adopted
as natural born.*

7 Ann. c. 5. s. 3.
Eng.
4 Geo. 2. c. 21.
s. 1. Eng.

Having thus traced the line of separation which divides the several classes of natives, I proceed to the statutes which include within the description of natural born subjects, certain persons though born out of the king's dominions or allegiance. By the 7 Ann. c. 5. s. 3. Eng.

as explained by the 4 Geo. 2. c. 21. Eng. all children born out of the ligeance of the crown of England or of Great Britain, whose fathers shall be natural born subjects of the crown of England, &c. at the time of the birth of such children, shall be adjudged and taken to be natural born subjects, to all intents and purposes.

s. 2.

But by the latter statute, s. 2. these acts shall not extend to make any children born out of the ligeance of the crown of England, &c. to be natural born subjects, &c. whose fathers at the time of the birth of such children, shall be attainted of high treason, by judgment, outlawry, or otherwise, either in Great Britain or Ireland, or whose fathers at the time of the birth of such children shall, by any law made in Great Britain or Ireland, be liable to the penalties of high treason or felony, in case of their returning into either kingdom without the license of the crown, or whose fathers at the time of the birth of such children shall be in the actual service of any foreign prince or state then in enmity with the crown of England or Great Britain. And the provisions of these

13 Geo. 3. c. 21.
Eng.

*Grandchildren
by the father's
side.*

acts are further extended by the 13 Geo. 3. c. 21. Eng. to grandchildren by the father's side, this statute having enacted, that all persons born or who shall be born out of the ligeance of the crown of England or of Great Britain, whose fathers were or shall be by virtue of the 4 Geo. 2. c. 21. entitled to the rights and privileges of natural

tural born subjects, &c. shall be natural born subjects to all intents and purposes: but by s. 3. nothing in this act shall extend to repeal, abridge or alter the 5 Geo. 1. c. 27. (against seducing artificers) or to repeal, &c. any law or usage concerning aliens duties,* customs and impositions, nor to cause any privilege, exemption, or abatement relating thereto, in favour of any person naturalized by virtue of this act, unless such person shall come into this realm and there inhabit and reside, and take and subscribe the oaths, and make and subscribe the declaration appointed by the 1 Geo. 1. st. 2. c. 13. in such manner and at such place as by said act directed, and also receive the sacrament according to the usage of the church of England, or in some protestant or reformed congregation within Great Britain, within 3 months before their taking said oaths, and shall at the time and place of the taking said oaths, &c. produce a certificate signed by the person administering the sacrament, and attested by 2 witnesses, whereof an entry shall be made of record in the court where such oath shall be taken, without fee. And by s. 4. no person shall be enabled hereby to claim any estate, right or interest, unless such claim shall be made within 5 years next after the same shall accrue. These statutes have hitherto remained without adoption in Ireland, but the 7 Ann. c. 5. Eng. was declared by s. 4. to extend to this kingdom.

II. With respect to *denizens*, (i. e. aliens made British subjects by the king's letters patent) the 22 Hen. 8. c. 8. Eng. enacts, that such persons shall pay to the king, and to all officers of cities, boroughs and towns in England, all such subsidies, customs, tolls and duties for their wares and merchandizes, as they ought to have paid before they were denizens. And by the 14 & 15 Car. 2. c. 9. Ir. denizens were declared to be liable to pay the same custom as before they were made denizens, unless constantly abiding in the realm.* By the 12 & 13 W. 3. c. 2. Eng. no person born out of England, Scotland, or Ireland, or the dominions thereunto belonging, although he be naturalized or made a denizen, except such as are born of English parents, shall be of the privy council, or a member of either house of parliament, or enjoy

s. 3.

*Vide page 194

s. 4.

§ 2.

Denizens.
22 Hen. 8. c. 8.
Eng.

14 & 15 Car. 2.
s. 9. Ir.

*Vide page 194
12 & 13 W. 3.
c. 2. Eng.

any office or place of trust either civil or military, or have any grant of lands, &c. from the crown, to himself or to any other person in trust for him. This provision of the act of settlement may be considered as extending to Ireland, being a part of the compact between the king and his people, or a condition accompanying the limitation of the crown.

§ 3.

Aliens naturalized.

III. Next as to *aliens*, the statutes which respect their capacity to acquire property by purchase or descent, are reserved for another part of this Digest; but those statutes which relate to the naturalization of aliens, are proper for this place. The clause of the act of settlement above stated, which excludes denizens from certain privileges, extends in like manner to aliens, though naturalized: and by the 1 Geo. 1. st. 2. c. 4. Eng. no person shall be naturalized, unless in the bill exhibited for that purpose, there be a clause or particular words inserted, to declare that such person shall not thereby be enabled to be of the privy council, or a member of either house of parliament, or to take any office or place of trust civil or military, or to have any grant of lands, &c. from the crown, to himself or any other person in trust for him; and no bill of naturalization shall be received in either house of parliament, unless such clause or words be first inserted therein. The 14 Geo. 3. c. 84. Eng. further provides, that no person shall be naturalized, unless in the bill exhibited for the purpose there shall be a clause or proviso inserted, to declare that such person shall not thereby obtain, or become entitled to claim within any foreign country, any of the immunities or indulgences in trade which may be enjoyed by natural born British subjects, by virtue of any treaty or otherwise, unless such person shall have inhabited and resided within Great Britain, or the dominions thereunto belonging, for 7 years subsequent to the 1st day of the session of parliament in which such bill shall have passed, and shall not have been absent for more than 2 months at any one time during the said 7 years; and no bill of naturalization shall be received in either house of parliament, unless such clause or proviso be first inserted therein. And by the 7 Jac. 1. c. 2. Eng. no person of the

1 Geo. 1. st. 2.
c. 4. Eng.

14 Geo. 3. c. 84.
Eng.

Bills of naturalization.

7 Jac. 1. c. 2.
Eng.

the age of 18 years or above, shall be naturalized or restored in blood, unless such person shall have received the sacrament of the Lord's supper within one month next before any bill exhibited for that purpose, and also shall take the oath of supremacy and the oath of allegiance in the parliament house, before his bill be twice read; and the lord chancellor, if the bill begin in the upper house, and the speaker of the house of commons, if the bill begin there, shall have authority to administer such oaths.

Requisites to be complied with previous to naturalization.

The 14 & 15 Car. 2. c. 13. Ir. was the first statute which naturalized all such foreign or alien merchants, traders, artizans, artificers, manufacturers, or mariners, or other persons born out of the king's dominions, being protestants, as should within 7 years from the end of the then parliament transport themselves with their stock and families into Ireland, upon condition of their taking the oaths of allegiance and supremacy. The object of this act, as expressed in its preamble, was, to replenish with people the kingdom of Ireland, which had been much despoiled and wasted by reason of the intestine troubles and wars, and to revive and restore the trade and commerce of the country. This act was afterwards revived and continued by the 4 W. & M. c. 2. Ir. and the oaths of allegiance and supremacy, and the declaration against transubstantiation, invocation of saints, and the sacrifice of the mass, (as settled by the 3 W. & M. c. 2. Eng. which are set forth in this Irish statute) were required to be taken, &c. by such aliens, &c. previous to their becoming naturalized. These acts were further continued by the 2 Ann. c. 14. Ir. which prescribed the oath of abjuration as an additional test or qualification. And the 14 & 15 Car. 2. c. 13. and all its provisions (save the clause (s. 7.) which exempted protestant strangers from payment of the excise) was made perpetual by the 4 Geo. 1. c. 9. Ir. which also required the same oaths to be taken, and the same declaration made and subscribed, as were appointed by the 4 W. & M. c. 2. and 2 Ann. c. 14. But the 19 & 20 Geo. 3. c. 29. Ir. enacts, that all foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and

Naturalization in Ireland.

14 & 15 Car. 2. c. 13. Ir.

4 W. & M. c. 2. Ir.

2 Ann. c. 14. Ir.

4 Geo. 1. c. 9. Ir.

19 & 20 Geo. 3. c. 29. Ir.

*New oath re-
quired to be
taken by alien
merchants, &c*

* *Ante page 300*

s. 2.

s. 3.

s. 4.

23 & 24 Geo. 3.
c. 38. Ir.

*Noblemen and
Gentlemen in-
cluded. Jews
excepted.*

s. 2.

s. 3.

others, who shall transport themselves to settle in any part of Ireland, shall, after taking the oath or affirmation appointed by this act, before the chief magistrate of any city or town, (who is required to certify the same into chancery) be deemed to be natural subjects, whilst they shall reside in Ireland. The oath required to be taken by this act is the same as that appointed for catholics by the 13 & 14 Geo. 3. c. 35. Ir.* except that in the former those words are omitted, which in the latter adapt the oath to Christians only, viz. "and his only son Jesus Christ, my redeemer." By s. 2. no person naturalized by this act shall be enabled to serve in parliament, or to be of the privy council, or to hold any office, of trust, civil or military, in Ireland. By s. 3. if any person shall give any interruption to any such foreign merchant, &c. in his working, buying, or selling, contrary to the intent of this act, he shall forfeit £20. to be recovered before any justice of peace, on the oath of 1 witness, one moiety thereof to the informer, and the other to the poor of the parish. And by s. 4. all such strangers as shall come and settle in any city, town, or borough, shall be freed from any corporation or parish offices for 7 years after their coming into Ireland. The provisions of this act are extended to noblemen and gentlemen, as well as to merchants, &c. or others, of any sect, religion, or persuasion, born out of Ireland, (except persons professing the Jewish religion,) by the 23 & 24 Geo. 3. c. 38. Ir. which prescribes the same form of oath, as the 19 & 20 Geo. 3. c. 29. Ir. and provides also (s. 2.) that no person naturalized by this act shall be entitled to serve in parliament, or to be of the privy council, or a peer of the realm, or to hold any office of trust or profit, civil or military, unless he shall be a protestant, and shall have resided in Ireland 3 years, at one or different periods, from the passing of this act; and further provides, s. 3. that no person so naturalized shall be entitled to vote in any election for a representative in parliament for any city or borough, or in the choice of any magistrate for any city, &c. of which by virtue of these acts he shall be made free, unless he shall have obtained such right of voting

voting by such ways as any other of his majesty's subjects. The 36 Geo. 3. c. 48. Ir. explains and amends the 19 & 20 Geo. 3. c. 29. Ir. by declaring that it shall extend to all other foreign persons, as well as merchants, &c. who shall take the oath or affirmation as thereby prescribed, and every such person shall thereupon be entitled to take, hold and enjoy any lands, &c. either by purchase, descent, or otherwise, as a natural born subject; but this act provides, that no person shall be entitled to the benefit of this act, or of the 19 & 20 Geo. 3. c. 29. who shall not previously have obtained a license from the chief governor of Ireland in council, of his being a proper person to be naturalized; which license he shall produce to the magistrate, before he shall administer the oath required by the 19 & 20 Geo. 3.; and such license shall be filed with the magistrate's certificate in chancery, there to remain on record; this act also contains a proviso similar to that of the 19 & 20 Geo. 3. c. 29. s. 2. *ante*. But this act does not except Jews, or otherwise advert to the 23 & 24 Geo. 3. c. 38. Ir.

36 Geo. 3. c. 48. Ir.

License of the lord lieutenant required previous to naturalization.

By the 13 Geo. 2. c. 3. Eng. every foreign seaman who shall have faithfully served during the time of war on board any king's ship, or any trading ship or privateer belonging to subjects of Great Britain, for 2 years, pursuant to the king's proclamation, shall be deemed a natural born subject. And by the 22 Geo. 2. c. 45. s. 8. Eng. every foreign protestant who shall serve 3 years on board any ship, (fitted out as directed by the 6 Geo. 2. c. 33. or by this act) employed in the whale-fishery in the Greenland seas, or Davis's streights, and who shall take the oaths, &c. contained in the 1 Geo. 1. st. 2. c. 13. and receive the sacrament, as appointed by this act, shall be deemed a natural born subject. But this act excludes those who are excepted by the 7 Ann. c. 5. s. 3. Eng,* and both these acts contain the same exceptions and restrictions as the 12 & 13 W. 3. c. 2.† By the 13 Geo. 2. c. 7. Eng. as amended by the 20 Geo. 2. c. 44. all persons born out of the ligeance of the king, upon their residing 7 years in any of the American colonies, without being absent more than 2 months at a time, and upon taking the oaths contained in the 1 Geo. 1. st. 2. c. 13. (or if quakers or

Foreign seamen naturalized.

13 Geo. 2. c. 3. Eng.

22 Geo. 2. c. 45. s. 8. Eng.

* *Ante* page 304

† *Ante* page 305

13 Geo. 2. c. 7. Eng.

20 Geo. 2. c. 44. Eng.

Persons in the American colonies naturalized.

other

other protestants who conscientiously scruple the taking an oath, upon their making such declarations or affirmations to the same effect as prescribed by the 8 Geo. 1. c. 6. Eng.) before the chief judge or other judge of such colony, are to be deemed natural born subjects of Great Britain; but all such foreign protestants (except quakers) are further required to receive the sacrament in some reformed or protestant church, in Great Britain, or in some one of the colonies, within 3 months before taking such oaths, &c. and at the time of taking the oaths to produce a certificate thereof, signed by the person administering the sacrament, and attested

13 Geo. 2. c. 7. s. 2. Eng. by 2 witnesses. And with respect to Jews, they, as well as quakers, are exempt, by the 13 Geo. 2. c. 7. s. 3. s. 2. Eng. from taking the sacrament; and by s. 3. whenever any Jew shall present himself to take the oath of abjuration in pursuance of this act, the words "upon the true faith of a Christian," shall be omitted.

2 Geo. 3. c. 25. Eng. By the 2 Geo. 3. c. 25. Eng. all foreign protestants who have served or shall serve in the royal American regiment, or as engineers in America, for 2 years, who shall take the oaths appointed by 1 Geo. 1. st. 2. c. 13. and shall at the time produce certificates of their having received the sacrament in some protestant and reformed congregation within Great Britain, or within some of the colonies in America, within 6 months before, shall be deemed to be natural subjects of Great Britain. These acts also exclude those who are excepted by the 7 Ann. c. 5. s. 3. ;* and contain the same restrictions as the 12

* *Ante* page 304 c. 5. s. 3. ;* and contain the same restrictions as the 12

† *Ante* page 305 & 13 W. 3. c. 2. † But by the 13 Geo. 3. c. 25. Eng. 13 Geo. 3. c. 25. every person that shall become a natural born subject by virtue of the 13 Geo. 2. c. 7. or 3 Geo. 3. c. 25. shall be capable of taking and holding any office or place of trust, either civil or military, and of taking any grant of lands, &c. from the crown, except offices and grants, within Great Britain and Ireland.

CHAP. XI.

Of the Clergy.

§ 1.

THE statutes which relate to the personal exemption of the clergy from serving on juries, their privileges from arrests in civil suits, and the distinctions in their favour in cases of conviction for felony, will all fall under consideration in the subsequent pages of this Digest; and the statutes which declare their incapacity to be elected, or to sit as members of the house of commons, have been already noticed in the proper place. I proceed therefore, (according to the order of Sir William Blackstone) to the 21 Hen. 8. c. 13. Eng. as amended by the 43 Geo. 3, c. 84. E. which respects the disability of spiritual persons in England to take lands or tenements to farm. The former of these statutes enacted that no spiritual person should take to ferm, to himself or any person to his use, of the lease or grant of the king, or of any other person, by letters patent, indentures, words or otherwise, any manors, lands, tenements or hereditaments, for the term of life, for years, or at will, upon pain to forfeit £10. for every month that he or any one to his use should occupy the same, one half to the king, and the other half to the person suing for the same in any of the king's courts, by action of debt, &c.; and by s. 3. all such leases were declared to be void: and by s. 30. spiritual persons beneficed with cure of souls, were also prohibited from occupying by themselves or any others to their use, by authority of any license, dispensation, or otherwise, any parsonage or vicarage in ferm, and from taking any profit or rent thereout, upon pain of forfeiting 40s. a week, and ten times the value of such profit or rent, one half to the king, and the other half to the person suing for the same, to be recovered as by s. 1. And by a special proviso (s. 31.) no deanery, archdeaconry, chancellorship, treasurer'ship, chantorship, or prebend in any cathedral or collegiate church, or parsonage having a vicar endowed,

Clergy excluded from being farmers.

21 Hen. 8. c. 13. Eng.
43 Geo. 3. c. 84. E.

s. 3.

s. 30.

s. 31.

or

s. 4.

43 Geo. 3. c. 84.
s. 4. E.*Exceptions.*

s. 5.

or any benefice perpetually appropriate, is to be comprehended under the name of benefice having cure of souls, within the meaning of this act. But this act was declared by s. 4. not to extend to any spiritual person taking to farm any temporalities during the time of vacations of any archbishopricks, bishopricks, cathedral or collegiate churches, &c. nor to any spiritual person that shall tender a traverse upon any office concerning his freehold. This act contained some further exceptions, but is in this respect amended by the 43 Geo. 3. c. 84. E. which enacts (s. 4.) that it shall be lawful for any spiritual person to take to farm, to himself or to any person to his use, by lease, grant, words or otherwise, for term of life or years, or at will, any messuage, mansion or dwelling-house, with or without orchards, gardens, and other appurtenances, although not in any city, borough, or town; and any spiritual person having or holding any *donative, perpetual curacy, or parochial chapelry, not having sufficient or convenient glebe or demesne lands annexed to or in right of his benefice, or cure, or chapelry, or any stipendiary curate, or any unbeneficed spiritual person, may, with the consent of the bishop of the diocess, signified in writing, take to farm, &c. for a limited term of years, any farm, lands, &c. that may appear to such bishop proper to be taken or occupied by such spiritual person, for the convenience of his household and hospitality only; but this act shall not extend to authorize any non-residence of any such spiritual person. By s. 5. any spiritual person may by himself, &c. have or occupy in farm, any lands, &c. demised or granted to such person as his property or estate; or take, purchase, receive, or hold as his property, &c. any lease for life or lives, or for years absolute or determinable on any life or lives, or take any annual rent, or other annual profit by occasion of any lease or farm of any lands, &c. the property or estate of such spiritual person, either in his own right, or in right of any other person, or by reason of any spiritual dignity or benefice: but nothing herein shall extend to authorize any spiritual person having or holding any dignity, prebend, benefice, donative,

*The omission of the word *benefice* in this act, is supplied by the 43 Geo. 3. c. 109.

donative, perpetual curacy, or parochial chapelry, or serving a stipendiary curacy, to take, &c. any such lands, &c. for the purpose of occupying the same, for the cultivation thereof, or procuring profits therefrom, by himself, or any bailiff or servant for his use, unless under a lease granted to such person on or before 1st January, 1803, or unless by the consent of the bishop signified as aforesaid. And by s. 7. any spiritual person having any vicarage or perpetual curacy, or the stipendiary curate thereof, may occupy by himself or any person to his use, in ferm, of the lease or grant of any person, the impropriate parsonage, rectory, or vicarage, of the parish of which such person shall be the vicar, &c. or any part thereof, or take any profit or rent out of any such farm: but by s. 8. where such impropriate parsonage, &c. shall not be before the passing of this act (7 July 1803) have been so occupied by such spiritual person, such person shall remain liable to the penalties of the 21 Hen. 8. unless he shall have obtained the license of the bishop for so occupying the same. And it is further provided (s. 9.) that any clergyman possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, who shall be licensed or otherwise exempted from residence under this or any other act, may take to ferm and occupy in the parish where he resides, or any adjoining parish, such lands for the convenience of his household and hospitality only, as the bishop of the diocese in which he resides may allow by any writing under his hand.

By the 21 Hen. 8. c. 13. s. 5. Eng. spiritual persons were prohibited from buying to sell again for profit, in any markets, fairs, or other places, any manner of victual or merchandize, upon pain to forfeit treble the value thereof: and every such bargain and contract is thereby declared to be void. But the 43 Geo. 3. c. 84. s. 6. E. with reference to this and other clauses of the 21 Hen. 8. provides, that it shall be lawful for any spiritual person, by himself or any other to his use, to bargain, and buy or sell again for profit any manner of cattle or corn, that may be necessary proper or convenient to be bought, sold, kept, or maintained, for the occupation, manuring, improving, pasturage, or profit of any farms, lands, &c.

that

s. 7.

s. 8.

s. 9.

Restraint upon spiritual persons buying or selling cattle, &c.

21 Hen. 8. c. 13. s. 5. Eng.

43 Geo. 3. c. 84. s. 6. E.

21 Hen. 8. c. 13.
s. 32. Eng.

*Tanning and
brewing re-
strained.*

that may by virtue of this act or of any other law be lawfully held and occupied by such spiritual person: provided however that such spiritual person shall not buy or sell any cattle or corn in person, in any market, fair, or place of public sale. It is also a provision of the 21 Hen. 8. c. 13. (s. 32.) that no spiritual person shall have, use, or keep by himself or by any person to his use, any tanhouse to be used or occupied to his own behoof; or any brew-house for any other use than that of his own house, upon pain of forfeiting £10. for every month he shall so use or occupy any of said mysteries or occupations: such penalties to be disposed of and recovered as by s. 1. *ante*.

§ 2.

*Elections of bi-
shops, &c. free.*

25 Edw. 3. st. 6.
s. 3. E. & I.

25 Hen. 8. c. 20.
s. 4. Eng.

*Mode of elect-
ing bishops.*

II. The first provision of the Great Charter is, that the church of England shall be free, and shall have all her rights and liberties inviolable. And the 50 Edw. 3. c. 1.; 3 Ric. 2. c. 1.; and 5 Ric. 2. st. 1, c. 1. in like manner assert the rights of the church. The 25 Edw. 3. st. 6, s. 3. E. & I. also provides, that the free elections of archbishops, bishops, and all other dignities and benefices elective in England, shall continue in like manner as they were granted by the king's progenitors, and the ancestors of other lords, founders of the said dignities, &c. and that all prelates and other people of the holy church, which have advowsons of any benefices, of the king's gift, or of any of his progenitors, or of other lords and donors, to perform divine services and other duties, shall have their collations and presentments freely to the same, according as they were enfeoffed by their donors. By the 25 Hen. 8. c. 20. s. 4. Eng. (which was revived and confirmed by the 1 Eliz. c. 1. s. 7.) at every avoidance of every archbishoprick or bishoprick within the realm, or in any other the king's dominions, the king may grant to the dean and chapter of the cathedral church of such vacant see, a license under the great seal, as of old time accustomed, to proceed to the election of an archbishop, &c. with a letter missive containing the name of the person whom they shall elect; who shall accordingly be chosen and none other. And if they defer or delay their election above 12 days next after such license or letters missive to them delivered, then the king shall nominate and present by his letters patent under the great seal, such

such person as he shall think able and convenient for the same: and every such nomination and presentment to a bishoprick by the king, shall be made to the archbishop of the province, if said archbishoprick be then full, or otherwise to such archbishop within the realm, or in any of the king's dominions, as the king shall think fit: and also such nomination of an archbishop by the king shall be made to one archbishop and 2 bishops, or else to 4 such bishops within the realm, or king's dominions, as shall be assigned by the king. By s. 5. every archbishop, &c. to whom any such nomination, &c. shall be directed, shall with all speed invest and consecrate the person so nominated, and give and use to him the pall, and all other benedictions, and ceremonies, without suing or procuring any bulls or other things at the see of Rome for any such dignity. And where the dean and chapter shall elect the person mentioned in the letters missive, the person so elected, after certification made thereof under the common seal of the electors, shall be reputed lord elected of the said dignity and office, and make such oath and fealty to the king only, as shall be appointed. And such election, if of a bishop, shall be signified by the king's letters patent under the great seal to the archbishop of the province, or, if of an archbishop, to one archbishop and 2 bishops, or to 4 bishops, requiring such archbishop, &c. to confirm said election, and to invest and consecrate the person so elected, without any application to the see of Rome as aforesaid. By s. 6. every archbishop or bishop so chosen or nominated and invested and consecrated, making oath to the king and suing the temporalties out of the king's hands, shall be thrononized or installed as the case shall require, and shall have restitution of all the possessions and profits, spiritual and temporal, belonging to the said archbishoprick, &c. And by s. 7. if such dean and chapter shall not elect within 20 days next after such license shall come to their hands, or if any archbishop or bishop shall not confirm, invest, and consecrate, with all due circumstances, any person so elected, &c. within 20 days after the king's letters patent of such signification or presentation shall come to their hands, or if any of them or any other person shall admit

s. 5.

s. 6.

s. 7.

admit, maintain, obey, or execute any censures, excommunications, interdictions, inhibitions, or other process to the contrary, or let of the due execution of this act, every such archbishop, &c. so offending and their aiders, counsellors, and abettors shall incur the penalties of the sta-

*Vide Book 4.
ch. 8.

8 Eliz. c. 1.
s. 5. Eng.

tutes 25 Edw. 3. st. 5. c. 22. and 16 Ric. 2. c. 5.* This statute of Henry VIII. was repealed by the 1 & 2 Ph. & M. c. 8. s. 9. Eng.; but was revived by the 1 Eliz. c. 1. s. 7. Eng. and further confirmed by the 8 Eliz. c. 1. Eng. which enacts (s. 5.) that archbishops, bishops, priests, deacons, and ministers shall be consecrated, made, and ordered in such manner and form as prescribed by the Book of Common Prayer, which was established by authority of the 2 & 3 Edw. 6. c. 1. Eng. and 5 & 6 Edw. 6. c. 1. Eng.

Mode of ap-
pointing bishops
in Ireland.

2 Eliz. c. 4. Ir.

In Ireland the 2 Eliz. c. 4. Ir. has taken away the writ of *conge d' elire*, and thereby made bishopricks donative, instead of elective. This Irish statute recites, that the elections of archbishops and bishops, by deans and chapters, were in very deed no elections, but only by a writ of *conge d' elire* have colours, shadows, or pretences of elections, serving to no purpose, and seeming derogatory to the royal prerogative, and therefore enacts, that no *conge d' elire* be granted, nor election of any archbishop or bishop by the dean and chapter made, but that the crown may by letters patent under the great seal of England or Ireland, or the chief governor of Ireland for the time being having instructions, letters missive or other warrant from the crown, &c. may, by letters patent to be made by his warrant under the great seal of Ireland, when any archbishoprick, &c. shall be void, confer the same to any person whom the crown shall think meet; which collation so made and delivered to such person, or to his sufficient proctor and attorney, shall be of the same effect, as if a *conge d' elire* had been given, and election duly made and confirmed: and such person may be consecrated, and sue his livery or *ousterlemain*, as if the said ceremonies had been performed. This act has so far followed the 1 Edw. 6. c. 2. Eng. which was repealed by the 1 Eliz. c. 1. Eng. but in other respects pursues the 25 Hen. 8. c. 20. Eng. as to the signifying of collations by the crown or chief governor, and as to the investing and consecrating,
and

and thrononizing or installing the archbishop or bishop so collated: and such ceremonies of investing, &c. are in like manner required to be performed within 20 days after the letters patent of collation shall come to the hands of the archbishop, &c. to whom the same shall be signified, and all acts or offences contrary to this statute, are in like manner prohibited, upon the like pain of incurring the penalties of the 25 Edw. 3. st. 5. c. 22. E. & I. and 16 Ric. 2. c. 5. E. & I.

The 25 Hen. 8. c. 21. Eng. enacts, (s. 3.) that the archbishop of Canterbury shall have power to grant unto the king, by an instrument under seal, all such licenses, dispensations, compositions, faculties, grants, rescripts, delegacies, instruments and other writings for causes not repugnant to the holy scriptures, as had been used to be obtained at the see of Rome; and all such other licenses, &c. as shall be convenient and necessary for the honour and surety of the king, and the wealth and profit of the realm, so that such cause or matter be not repugnant to the laws of God. And by s. 4. the said archbishop after due examination of the causes and qualities of the persons procuring for licenses, &c. may in like manner grant to any of the king's subjects, such licenses, &c. as were accustomed to be had at the see of Rome, or by authority thereof, or of any prelate of this realm. But by s. 5. no dispensation, &c. shall be granted in cases unwont, without the approbation of the king or his council, upon pain of being fined at the king's pleasure. And by s. 6. all dispensations in matters of importance are to be first confirmed by the king under the great seal, and inrolled in chancery. And it is provided (s. 15.) that this act shall not be prejudicial to the archbishop of York, or to any other prelate, but that they may lawfully dispense in all cases in which they were wont to dispense by the common law or custom of the realm. By s. 16. where the see of Canterbury shall be void, such licenses, dispensations, &c. may be granted under the name and seal of the guardian of the spiritualities of said archbishoprick: and by s. 17. if the said archbishop of Canterbury or the guardian of the spiritualities shall refuse or deny to grant any

Power of granting dispensations, &c.

25 Hen. 8. c. 21. s. 3. Eng.

s. 4.

s. 5.

s. 6.

s. 15.

s. 16.

s. 17.

any such licenses, &c. the chancellor of England shall upon complaint thereof direct the king's writ to the said archbishop, &c. enjoining him upon a certain pain therein to be limited, by the direction of the chancellor, to grant such license, &c. or else to signify unto the king in the court of chancery, at a certain day, for what cause he refused to grant such license; and if it shall appear that the archbishop, &c. so refused without reasonable cause, then the chancellor shall issue a writ of injunct on under the great seal commanding the archbishop, &c. to grant such license, &c. by a certain day, and under a certain pain therein contained; and if the said archbishop, &c. after the receipt of said writ, shall refuse or deny to grant such license, &c. and shew no just or reasonable cause before the king why he should do so, he shall forfeit such penalty as shall be expressed in said writ, and the king shall thereupon authorize and appoint 2 spiritual prelates or persons, by commission under the great seal, to grant such licenses, &c. This statute contains also several clauses in respect to the taxes and fees for such dispensations, and the appointment of clerks to register and inrol them. The 28 Hen. 8. c. 19. Ir. recites the above clauses amongst others of this English statute; and by s. 20. declares that it shall extend to Ireland, as the king's proper dominion, and a member appending and rightfully belonging to the imperial crown of England, and united to the same. And by s. 21. declares that the archbishops and bishops of Ireland shall have power to dispense in all cases in which they were wont to dispense by the common law or custom of Ireland. And by s. 22. provides that every person authorized and appointed by the king, by commission under the great seal, shall have the same authority as the archbishop of Canterbury, for exercising any ecclesiastical jurisdiction, or for granting any faculties, licenses, dispensations, &c. and the chancellor of Ireland shall have the like powers by virtue of this act, as the chancellor of England by virtue of the said recited statute.

§ 3.

Parsons and vicars.

III. To remedy the mischiefs arising from the appropriation of benefices, it is enacted by the 15 Ric. 2. c. 6. E. & I. that

that in every license to be made in chancery for the appropriation of any parish church, it shall be expressly contained, that the diocesan of the place, upon the appropriation of such churches, shall ordain, according to the value of such churches, a convenient sum of money to be paid and distributed yearly of the fruits and profits of the same, by those that shall have the said churches, to the poor parishioners in aid of their living and sustenance for ever; and also that the vicar be well and sufficiently endowed. And the 4 Hen. 4. c. 12. E. & I. further provides, that in every church appropriated according to the 15 Ric. 2. c. 6. a secular person and not a member of any religious house shall be ordained vicar perpetual, who shall be canonically instituted and inducted, and sufficiently endowed at the discretion of the ordinary, to do divine service, to inform the people, and to keep hospitality. But notwithstanding the provisions of these statutes, several lay impropriations or secular parsonages have sprung, in England and Ireland, from the dissolution of the monasteries and other religious houses, by king Henry VIII. and in former reigns; these appropriations, which by several statutes were vested in the crown, having been from time to time granted to lay persons. The 27 Hen. 8. c. 28. Eng. and 31 Hen. 8. c. 13. Eng. have been followed by the 28 Hen. 8. c. 16. Ir. and 33 Hen. 8. st. 2. c. 5. Ir. in transferring to the king, the appropriations of the several parsonages, which belonged to the religious houses dissolved by those statutes. The 27 Hen. 8. c. 28. s. 1. Eng. and 28 Hen. 8. c. 16. s. 2. Ir. respectively enacted, that the king should have all the sites and circuits of the religious houses thereby dissolved, and all and singular the manors, granges, manses, lands, tenements, rents, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, annuities, rights, entries, conditions, and other hereditaments belonging to every such religious house, in as ample a manner as the abbots, priors, and other governors of such monasteries and other religious houses, had or ought to have the same, in right of their said houses. The 31 Hen. 8. c. 13. Eng. and 33 Hen. 8. st. 2. c. 5. Ir. expressly

15 Ric. 2. c. 6.
E. & I.*Maintenance of
vicars.*4 Hen. 4. c. 12.
E. & I.*Secular parson-
ages.*27 Hen. 8. c. 28.
Eng.
28 Hen. 8. c. 16.
Ir.31 Hen. 8. c. 13.
Eng.
33 Hen. 8. st. 2.
c. 5. Ir.

expressly included parsonages appropriate, in their ename-
ration of the several rights and appurtenances which be-
longed to the religious houses thereby also dissolved;
and these acts also prospectively extended to all monas-
teries or religious houses, which should thereafter be dis-
solved, or otherwise come to the king.

*Erection of se-
veral vicarages
in Ireland.*

33 Hen. 8. st. 1.
c. 14. Ir.

The erecting and endowment of several vicarages in
Ireland, may be also traced to the same source. By the
33 Hen. 8. st. 1. c. 14. Ir. certain persons therein named were
empowered to erect, ordain, and incorporate one vicarage
of one vicar in every of the parish churches, which were
united and appropriated to the monasteries, religious
houses, and hospitals then dissolved; and the said per-
sons were thereby also authorized to limit and assign unto
every such vicar, such manses, portions of tithes, alter-
ages, and oblations, of the possessions coming to the
king by the dissolution of the said monasteries, &c. for
the maintenance of divine service, and for keeping of
good hospitality within said parishes. And this act further
provided that the lord chancellor of Ireland for the time
being, after the certificate had under the seal of said
persons, of the said limitation and appointment of said
tithes, &c. should by letters patent under the great seal
grant and endow the said vicars, with the said mansions,
tithes, &c. not exceeding the yearly value of £13. 6s.
8d. Irish, to hold to such vicars and their successors in
pure alms for ever, reserving to the king the 20th part
of every such vicarage, and the first fruits upon every
presentation, nomination, or collation of every such vicar.
And this act provided, (s. 2.) that after the first establish-
ment of every such vicarage, and after the admission and
institution of every such vicar, the king should enjoy the
advowson of every such vicarage as united to the imperial
crown.

*Augmentation
of vicarages.*

17 Car. 2. c. 3.
s. 7. Eng.

The 17 Car. 2. c. 3. s. 7. Eng. empowered the pro-
prietors of any impropriations, tithes or portions of tithes,
in any parish or chapelry in England or Wales, to give,
unite and annex the same, or any part thereof, unto the
parsonage or vicarage of the parish church or chapel
where the same did lie or arise, or to settle the same in
trust

trust for the benefit of said parsonage, or vicarage, or of the curate and curates thereof successively, where the parsonage is impropriate and no vicar endowed. And the 29 Car. 2. c. 8. Eng. confirms and perpetuates any augmentations made by ecclesiastical persons to small vicarages and curacies, provided that no future augmentation shall exceed one moiety of the clear yearly value of the rectory impropriate, out of which the same shall be granted or reserved.

29 Car. 2. c. 8.
Eng.

By the 10 & 11 Car. 1. c. 2. Ir. persons seised of any appropriations of any parsonages, rectories, vicarages, or other ecclesiastical benefices, or of any glebelands, tithes, portions of tithes, pensions, oblations, or other ecclesiastical rights, are enabled, notwithstanding any statute of mortmain, to restore or give the same or any part thereof by deed, or will, under seal, attested by 3 witnesses, unto the parson or vicar of the parish if any such was endowed therein, or otherwise to the archbishop of the province, or bishop of the diocess, in trust for the parson, rector, or vicar, to be there established according to the provision of this act, (s. 3.) and in the mean time in trust for the minister serving the cure of said parish. And by s. 3. if within the parish where said appropriations, &c. are limited by the said donors or devisors, there be no parson or vicar endowed, it shall be lawful for the ordinary and metropolitan of the diocess, after there shall be glebelands, tithes, &c. amounting to the full third part of the profits of the entire appropriation, limited as aforesaid, by writing under their respective seals to ordain one sufficient minister or clerk, to be parson or vicar of said parish in perpetual succession, and to cause him to be admitted, instituted, and inducted as parson, &c.; which ordination, &c. shall be inrolled within a convenient time after in the exchequer, at the costs of the person so ordained; and the said parson or vicar shall from thenceforth be seised in fee simple to him and his successors for ever of said parsonage, &c. By the several Irish statutes 2 Geo. 1. c. 14.; 10 Geo. 1. c. 6.; 29 Geo. 2. c. 18. and 23 & 24 Geo. 3. c. 49. archbishops, bishops, deans, dignitaries,

Augmentations
in Ireland.

10 & 11 Car. 1.
c. 2. s. 1. & 2. Ir.

s. 3.

and prebendaries, as also deans and chapters, are enabled to endow vicarages or curacies in their impropriate parishes, with a convenient portion of glebe or tithes or both, and also to augment any former endowment, for the support of a proper vicar or curate. And by the 32 Geo. 3. c. 12. Ir. the several impropriate rectories, which were forfeited by the rebellion in 1688, and vested in certain trustees for 20 years, for rebuilding and repairing churches, and then for the perpetual augmentation of such small rectories and vicarages, as the chief governor with the consent of the bishop of each respective diocese should appoint, are by this act annexed as appendant to the several rectories and vicarages mentioned in a certain instrument of appointment, bearing date the 19th March 1702, which is recited in this act.

Manner of becoming parson or vicar.

44 Geo. 3. c. 43. U. K.

Age for deacons and priests.

As to the method of becoming a parson or vicar, the 44 Geo. 3. c. 43. U. K. recites, that by the canons of the churches of England and Ireland, no bishop shall admit any person into the order of a deacon, who is not 23 years old, nor to be a priest except he be 24; and that by the prefaces to the forms of ordination of priests and deacons established by several acts of parliament of England and Ireland, none shall be admitted deacon except he be 23 years of age, unless he have a faculty; and every man to be admitted a priest shall be 24 years old; but that said rule had been disregarded in Ireland. In order therefore that one certain and undoubted rule and course of practice may hereafter prevail in this respect in England and Ireland, this statute enacts that no person shall be admitted a deacon before he shall have attained the age of 23, nor admitted a priest before he shall have attained the age of 24, or otherwise the admission of every such deacon or priest shall be void; and the person so admitted shall be incapable of holding, or being admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity, in virtue of such admission: but that no title to confer or present by lapse shall accrue by any avoidance, or deprivation, *ipso facto*, by virtue of this act, but after 6 months notice of such avoidance, &c. given by the ordinary to the patron. By s. 2. this act shall

shall not take away any right of granting faculties which may be lawfully exercised by the archbishop of Canterbury or the archbishop of Armagh. The 13 Eliz. c. 12. 13 Eliz. c. 12. s. 3. Eng. (as amended by the 23 Geo. 2. c. 28. s. 2. Eng.) also provides, that no person shall be admitted to any benefice with cure, except he be of the age of 23 years at least, and a deacon, and shall first have subscribed the articles of religion agreed to by the archbishops, bishops, and clergy, in the convocation held in London in 1562, in presence of the ordinary, and publicly read the same in the parish church of that benefice, with declaration of his unfeigned assent to the same. And every person to be admitted to a benefice with cure, except that, within 2 months after his induction, he publicly read the said articles in the church, in time of common prayer, with declaration of his unfeigned assent thereto, [* or otherwise at the time of reading the morning and evening prayer as directed by the 13 & 14 Car. 2. c. 4. Eng. post,] and be admitted to minister the sacraments within one year after his induction, if he be not so admitted before, shall be, *ipso facto*, deprived. And by s. 5. none shall be made minister, or admitted to preach, or administer the sacraments, unless he first bring to the bishop of the diocese, from men known by the bishop to be of sound religion, a testimonial both of his honest life and of his professing the doctrine expressed in said articles: nor unless he be able to answer and render to the ordinary an account of his faith, in Latin, according to the said articles, or have special gift or ability to be a preacher, nor until he shall first subscribe to said articles. And by s. 6. none shall be admitted to any benefice with cure of or above the value of £30. yearly in the queen's books, unless he shall then be a bachelor of divinity, or a preacher lawfully allowed by some bishop within the realm, or by one of the universities of Cambridge or Oxford. And by s. 7. all admissions, institutions, and inductions to the contrary, shall be void: but by s. 8. no title to confer or present by lapse shall accrue upon any deprivation *ipso facto*, until 6 months after notice given by the ordinary to the patron. No statute is similar in Ireland to the 13 Eliz. c. 12. By the 13 & 14 Car. 2. 13 & 14 Car. 2. c. 4. s. 14. Eng. no person shall be admitted to any par-

Qualification for admission to benefices and for ordination.

* By 23 Geo. 2. c. 28. s. 2. Eng.

s. 5.

s. 6.

s. 7.

s. 8.

Priests' orders necessary previous to admission to benefice, or administering the sacrament.

* "Ireland" in 17 & 18 Car. 2. c. 6. Ir.

† "and" in 17 & 18 Car. 2. c. 6. Ir.

s. 6.

Assent and consent to book of common prayer required after induction.

‡ "hereby" in 17 & 18 Car. 2. c. 6. Ir.

s. 8. 9 & 10.

Declaration of conformity to liturgy to be subscribed.

sonage, vicarage, benefice, or other ecclesiastical promotion or dignity, nor shall administer the sacrament of the Lord's supper, before he shall be ordained priest according to the form prescribed by the book intituled "The book of common prayer and administration of the sacraments, and other rites and ceremonies of the church, according to the use of the church of [*England,] together with the psalter or psalms of David, pointed as they are to be sung or said in churches; and the form [†or] manner of making, ordaining, and consecrating of bishops, priests, and deacons;" upon pain of forfeiting £100. one moiety to the king, and the other to be equally divided between the poor of the parish, and such person as shall sue by action of debt, &c. in any court of record; and upon pain also of being disabled for one year from being admitted into the order of priest. And by s. 6. every person who shall be presented or collated to any ecclesiastical benefice or promotion, shall, within 2 months after he shall be in the actual possession of such benefice, &c. in the church, &c. belonging to his benefice, &c. upon some Lord's day, openly, publicly, and solemnly, read the morning and evening prayers, appointed by said book of common prayer, at the times thereby appointed; and after reading thereof, shall publicly declare before the congregation, his unfeigned assent and consent to the use of all things in the said book in these words: "I *A. B.* do [‡there] declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the book intituled, &c. *ut supra*;" and every such person who shall [§without some lawful impediment to be allowed and approved of by the ordinary of the place,] neglect or refuse to do the same within the time aforesaid, or in case of such impediment, within one month after such impediment removed, shall, *ipso facto*, be deprived of all his ecclesiastical benefices, &c. By s. 8. 9 & 10. every dean, [|| canon, and prebendary] of every cathedral or collegiate church, and all masters and other heads, fellows, chaplains, and tutors in any college, hall, house of learning, or hospital, and every professor

§ This exception is extended by the 23 Geo. 2. c. 28. s. 1. Eng. to the not reading the certificate and declaration in the 8th 9th & 11th section *infra*.

|| "Other dignity," and "warden," added in 17 & 18 Car. 2. c. 6. Ir.

professor and reader in the universities, and in every college elsewhere, and every parson, vicar, curate, lecturer, and other person in holy orders, [and every schoolmaster keeping any public or private school, and every person instructing any youth in any house or private family as a tutor or school-master,] shall, at or before his admission to be incumbent, &c. subscribe the declaration following:

*“ I, *A. B.* do declare, that I will conform to the

“ liturgy of the church of [†England] as it is now by law

“ established.” Which declaration shall (by s. 10. (as

amended by the 15 Car. 2. c. 6. Eng.) be subscribed

by every master, and other head, fellow, chaplain, and

tutor of any college, &c. and by every public pro-

fessor and reader in either of the universities, before the

vice-chancellor of such university, [‡or his deputy;] and

before the archbishop, bishop, or ordinary of the diocese,

[§or before any vicar general, chancellor, or commissary,]

by every other person hereby enjoined to subscribe the

same, upon pain of forfeiting such deanery, &c. and

being disabled, and *ipso facto* deprived of the same:

and every such deanery, &c. shall be void. And by

s. 11. after such subscription made, every such parson,

vicar, curate, and lecturer, shall procure a certificate

under the hand and seal of the archbishop, bishop,

or ordinary of the diocese, respectively, and shall

publicly read the same together with the declaration

aforesaid, upon some Lord's day, within 3 months

then next following, in his parish church, in the pre-

sence of the congregation, in the time of divine service,

upon pain of being disabled and *ipso facto* deprived

of the same. But by s. 16. no title to confer or pre-

sent by lapse shall accrue, by any avoidance *ipso facto*

by virtue of this statute, till 6 months after notice of

such avoidance given by the ordinary to the patron, or

such sentence of deprivation publicly read in the parish

church of the benefice, &c. becoming void. But it is

provided (s. 15.) that this act shall not extend to the

foreigners or aliens of the reformed churches allowed by

the king. The 17 & 18 Car. 2. c. 6. Ir. contains clauses

corresponding to those of the 13 & 14 Car. 2. c. 4. Eng.

By the 1 Eliz. c. 1. Eng. and 1 W. & M. st. 1. c. 8.

*

Eng.

* Reduced to

this form by

1 W. & M.

st. 1. c. 8 s. 11.

Eng. and

4 Geo. 1. c. 3.

s. 1. Ir.

† Ireland in

17 & 18 Car. 2.

c. 6 Ir.

‡ “ Or visitor”

in 17 & 18

Car. 2. c. 6. Ir.

§ By the 15

Car. 2. c. 6.

s. 5. Eng.

s. 11.

Certificate
thereof.

s. 16.

s. 15.

17 & 18 Car. 2.
c. 6. Ir.

1 Eliz.c.1.Eng. Eng. and by the 2 Eliz. c. 1. Ir. and 3 W. & M. c. 2.
 1 W. & M.st.1. Eng. every person before he shall take upon him to re-
 c. 8. Eng. ceive or exercise any ecclesiastical office, ministry, or
 2 Eliz. c. 1. Ir. service, shall take the oaths of allegiance and supremacy
 3 W. & M.c.2. before such persons as shall have authority to admit him
 Eng. to such office, &c. or before such person as shall be as-
Oaths of allegi- signed [*by commission from the crown under the great
ance, &c. to be seal] to administer the same.
taken.

Duty of resi- So much of the 21 Hen. 8. c. 13. Eng. as imposes the
dence enforced. penalty of £10. on any spiritual person therein de-
 43 Geo. 3.c.84. scribed, who shall not keep residence on one of his dig-
 s. 12. E. nities, &c. is repealed by the 43 Geo. 3. c. 84. s. 12. E.
 which enacts, that every spiritual person being possessed
 of any archdeaconry, deanery, or other dignity, prebend,
 benefice, donative, or perpetual curacy, or parochial
 chapelry, who shall, without sufficient cause as in the
 21 Hen. 8. c. 13. Eng. 25 Hen. 8. c. 16. Eng. 28 Hen. 8.
 c. 13. Eng. or 33 Hen. 8. c. 28. Eng. is specified, or
 without such other sufficient cause as would exempt such
 spiritual person from any of the pains, penalties, and
 forfeitures, under the said recited acts, for any non-resi-
 dence, and who shall not have such license or exemption
 as in this act is mentioned, wilfully absent himself there-
 from for the space of 3 months together, or at several
 times, in any one year, and make his residence and
 abiding at any other place or places, except at some other
 dignity, &c. of which he may be possessed, shall, when
 such absence shall exceed such period as aforesaid, and
 not exceed 6 months, forfeit and pay one third of the an-
 nual value (deducting therefrom all outgoings, except any
 stipend paid to any curate) of the dignity, &c. from which
 he shall so absent himself; and when such absence shall
 exceed 6 months and not exceed 8 months, one-half,
 &c.; and when such absence shall exceed 8 months,
 two-thirds, &c.; and when such absence shall have
 been for the whole of the year, three-fourths of such
 annual value, to be recovered by action of debt, &c.
Suits for penal- in any court of record at Westminster, or the courts
ties. of

* "By the queen, &c. under the great seal of England or of this realm, or the lord deputy by letters patent under the great seal of this realm." in 9 Eliz. c. 1. Ir.

of great sessions in Wales, and the whole of such penalty to go to the person who shall sue for the same, together with such costs of suit as shall be allowed according to the practice of the court where such action shall be brought; but no parsonage that hath a vicar endowed or perpetual curacy, and having no cure of souls, shall be a benefice within the meaning of this act. And by s. 13. the court in which such action, &c. shall be depending, may require the diocesan to certify the reputed annual value of such benefice, &c. By s. 14. no person who has resided a year, without absence for more than 3 months, shall be liable for any previous non-residence, unless the action be commenced before he has so resided. And this act s. 15. exempts certain chaplains and persons from the penalties of non-residence: but by s. 16. no person who by the 28 Hen. 8. c. 13. was entitled to the privilege of non-residence until after the age of 40 years, shall be entitled to such privilege after the age of 30 years. By s. 17. no penalty or costs incurred by any spiritual person by reason of any non-residence on his dignity, shall be levied by execution against the body of such person, whilst he shall hold the same or any other dignity, &c. out of the profits of which the same can be levied by sequestration, within the term of 3 years.

s. 13.

s. 14.

s. 15. & 16.

Persons exempted from penalties.

s. 17.

Penalties and costs—how levied.

This act also contains several provisions in respect to the power and duty of archbishops and bishops in granting licenses for non-residence, and amongst others (by s. 21.) that such licenses may be revoked, and shall not be in force more than 2 years: and by s. 27. licenses may be pleaded in bar of any action brought under this or any other act; and if the plaintiff, after any such plea of license, shall be non-suit, or shall discontinue, the defendant shall have full costs of suit; and if a verdict shall be given for the defendant, he shall have treble costs. By s. 29. this act shall not exempt any person from any canonical or ecclesiastical censures for non-residence without lawful cause; but no such censure, for non-residence not exceeding 3 months in one year, shall be put in force; nor shall any proceeding be admitted in any ecclesiastical court for non-residence not exceeding 3 months in a year, except at the suit or instance of the

Licenses for non-residence.

s. 18. to 29.

archbishop,

archbishop, bishop, or archdeacon, of the diocess and archdeacons.

*Monitions to
reside,
s. 30.*

By s. 30. if any person not being licensed nor having lawful cause of absence, does not sufficiently reside, the bishop or archbishop, may issue a monition to such person forthwith to reside thereon and perform the duties thereof, and to make a return thereto within a certain number of days, not less than 30, after the issuing and delivery thereof; and if a return shall not be made, or shall not be satisfactory, the bishop may order residence within 30 days after the delivery of such order, and if such order shall be disobeyed he may sequester the profits of the benefice, and direct the application thereof, after deducting the expenses of serving the cure, and of the monition and sequestration, toward the augmentation or improvement of such parsonage, &c. or to be paid to the governors of queen Anne's bounty, or may remit or refund any part thereof to such spiritual person in case of subsequent obedience, or for other sufficient reasons: but an appeal against such sequestration may be made to the archbishop of the province. By

s. 31.

s. 32.

*Enforced by se-
questration.*

s. 33.

*Benefice void by
non-residence.*

s. 31. persons who shall return to residence, shall pay the costs of the monition or order. And by s. 32. if any person returning to residence after any monition or order, shall before 6 months absent himself, the archbishop or bishop may without monition, sequester the profits of the benefice. And by s. 33. if any clerk shall continue under any such sequestration for 3 years, or shall incur 3 such sequestrations in the space of 3 years, not being relieved with respect to any such sequestrations, upon appeal to the archbishop, the benefice, &c. in relation to non-residence upon which such sequestrations shall have been made, shall become *ipso facto* void.

*Contracts for
letting houses,
&c. void.*

s. 34.

By s. 34. all contracts or agreements made after the passing of this act, (7th July, 1803) for the letting of houses of residence, or the buildings, gardens, orchards, and appurtenances necessary for the convenient occupation of the same, belonging to any benefice, &c. to which houses of residence any person shall be required by order of the archbishop or bishop to proceed, a copy of which

which shall be transmitted to one of the church-wardens, and be by him served on the occupier of such house, or left at the same, shall be void; and any person continuing to hold any such house, &c. after the day on which said spiritual person shall be desired to reside, and after service of such copy, shall forfeit 40s. for every day he shall without permission of the archbishop, &c. wilfully continue to hold any such house, &c. but in cases of contracts, &c. made before the passing of this act, no penalty shall be incurred, nor sequestration issue, till 3 calendar months after the service of such order as aforesaid. But by s. 35. no person shall be liable to any penalty, for not residing in such house, while such tenant shall continue to occupy such house and other buildings.

s. 35

By s. 36 where any action, &c. shall be commenced against any spiritual person to whom any monition shall be sent, before the issuing thereof, for any penalty incurred by non-residence, the bishop, &c. shall upon notice of such action, &c. cause to be retained so much of the profits of the benefice, &c. as will be sufficient to satisfy such penalty, and the costs of such action, &c. and shall pay the same to the plaintiff if he shall obtain a verdict and judgment in such action, &c. after deducting the charges of the sequestration; but if at the time of filing any such monition, no such action shall have been commenced, then no such action shall be brought for any non-residence before the issuing of such monition or during any proceedings that may be had under such monition; and if any such action, &c. shall be so commenced, the defendant may plead in bar thereof, that such a monition has issued in respect of the same parsonage, &c.; and such defendant, unless upon application to the court the same shall be dispensed with, shall upon pleading such matter file an affidavit in said court, thereby stating that according to his belief the bishop, &c. is proceeding or intends to proceed upon said monition, to the intent to make the same effectual to the intents and purposes of this act, otherwise such plea shall not be available.

Action and monition.

s. 36.

By s. 38. this act shall extend to all dignities, &c. whether exempt or not exempt, and all peculiars: and

Act extends to dignities, &c. exempt.

by s. 38. & 39.

by s. 39. every archbishop, bishop, and archdeacon within the limits of whose province, diocese, or jurisdiction, any dignity, &c. exempt or peculiar, shall be, shall have all the powers necessary for the execution of this act, as if the same were not exempt: and where any such dignity, &c. shall be situate in more than one province, &c. or between the limits of two, the archbishop or bishop, to whose cathedral the parish church shall be nearest, shall have the like powers; and the same shall also be within the jurisdiction of the archdeacon, whose parish church is nearest to the church of such dignity, &c. This act (s. 40.) contains a saving for the king's prerogative in granting dispensations for non-residence; and for the privileges of clerks retained in the king's service under the statute 9 Edw. 2. c. 8. And by s. 41. no archbishop or bishop who shall have any dignity, &c. shall by reason of non-residence upon the same be subject to any penalties or forfeitures.

s. 40.
Saving for
king's prerogative,

s. 41.
and privileges
of bishops.

Residence of
clergy of Ireland
enforced.

48 Geo. 3. c. 66.
s. 1. to S. I.

s. 9.
s. 15. & 16.

s. 12.

s. 10.

s. 17.
43 Geo. 3. c. 84.
s. 25. E.

s. 37.

The 48 Geo. 3. c. 66. I. contains provisions for enforcing the residence of spiritual persons on their benefices in Ireland similar to those of the 43 Geo. 3. c. 84. s. 29. to 35. and 38. & 39. *supra*. And this act also by s. 9. contains a saving for the king's prerogative in granting dispensations: and by s. 15. & 16. for the privileges of the peers, archbishops, and bishops of Ireland respecting chaplains. By s. 12. special exemptions are granted to the chaplains of the lord lieutenant, the fellows of Trinity College, Dublin, and others. And this act is also declared (s. 10.) not to extend to parsonages having a vicar endowed, or perpetual curacies, and having no cure of souls. And by both acts a return is required to be made on or before the 25th March in every year, to the king in council, by the several archbishops and bishops, of the persons who shall not have resided on the respective benefices, &c. within their dioceses or jurisdiction. It is observable that the clause (s. 37.) of the 43 Geo. 3. c. 84. E. which enacts, that no oath shall be required of, or taken by any vicar in relation to residence on his vicarage, has not been adopted in the 48 Geo. 3. c. 66. I. though such oath is usually taken by vicars in Ireland.

Ireland.* All beneficed persons were required by the 36 Hen. 6. c. 1. Ir. to keep residence continually in Ireland, ^{36 Hen. 6. c. 1. Ir.} or otherwise the issues and profits of their benefices to be divided, half to the uses of their benefices and churches, and the other half to be expended in the wars in defence of Ireland: and any grants of absency by the king were declared void; but students, pilgrims, and those absent on necessary suit for reformation of their benefices were excepted. By the 1 Geo. 2. c. 18. s. 14. Ir. in case the incumbent of any church or chapel augmented or endowed under this act, shall be absent from his cure above 61 days in any year, without license of the archbishop, bishop, or ordinary, such church, &c. shall be void, and such incumbent, &c. for ever disabled to hold the same. And by the 29 Geo. 2. c. 18. s. 11. & 12. Ir. if the incumbent of any benefice, living, or curacy, whose maintenance shall be augmented by the grant of an annual salary or otherwise by the trustees of first fruits pursuant to this act, shall not reside, or be wilfully absent from the cure of such augmented church or chapel, for above 61 days in any year without the previous license of the bishop of the diocess, or from the guardian of the spiritualities under his episcopal seal of office, for good causes in such license expressed, and a certificate thereof under the hand and archiepiscopal or episcopal seal of office of the archbishop, &c. so granting the same; and unless such parson, vicar, curate, or minister so absent by virtue of such license shall provide a sufficient parson to be approved of by the archbishop, &c. to supply the cure during such absence; or if there shall be a discontinuance of the performance of divine service, except for causes to be approved of by the archbishop, &c. and certified to the trustees as aforesaid; such salary or augmentation shall cease during his incumbency. ^{1 Geo. 2. c. 18. s. 14. Ir.} ^{29 Geo. 2. c. 18. s. 11. & 12. Ir.}

In order to promote the residence of the parochial clergy, the 17 Geo. 3. c. 53. s. 1. Eng. enables the parson, vicar, or other incumbent of any ecclesiastical living, parochial benefice, chapelry, or perpetual curacy, being under the jurisdiction of the bishop or ordinary, whereon there is ^{Incumbents enabled to build glebe houses, &c.} ^{17 Geo. 3. c. 53. s. 1. Eng.} no

*Vide Browne's Civil Law, vol. 2. p. 244.

s. 6.
21 Geo. 3. c. 66.
Eng.

17 Geo. 3. c. 53.
s. 8. Eng.

*Power of ordi-
nary in default
of incumbent.*

s. 10.

*Glebes, &c. may
be bought*

s. 11.

s. 12.

*Governors of
queen Anne's
bounty empow-
ered to lend
money.*

no house of habitation, or such house is become so ruinous and decayed, or so mean, that one years neat income of such living will not be sufficient to build, rebuild, or to put the same with the necessary offices in sufficient repair, to borrow with the consent of the ordinary and patron of such living, such sum not exceeding 2 years neat income of such living, as shall appear (by such estimate as hereby prescribed) to be necessary for said purpose; and to mortgage the glebe, tithes, rents, and other profits of such living, for 25 years, as a security for the repayment of the principal, interest, and costs: and by this act (s. 6.) as amended by the 21 Geo. 3. c. 66. Eng. the incumbent of every such living, and his successors, shall pay to such mortgagee, beside the interest of the principal sum yearly, the sum of £5. *per cent. per annum*, if resident, or £10. *per cent. per annum*. if not resident for 20 weeks in each year, of the money originally advanced, until the whole of said principal money shall be discharged. The 17 Geo. 3. c. 53. s. 8. Eng. also provides, that where the income of such living exceeds £100. a year, and the incumbent does not reside 20 weeks within a year, it shall be lawful for the ordinary with the consent of the patron, in case the incumbent shall not think fit to lay out one year's income, or to make such application for aid as aforesaid, to proceed in the execution of this act, in such manner as the parson, &c. is hereby directed to proceed. And by s. 10. where new buildings are necessary for the residence of the incumbent, the ordinary, patron, and incumbent, may purchase any convenient house within a mile of the church, and a certain portion of land adjoining or convenient thereto, not exceeding 2 acres, if the annual value be less than £100. *per annum*, nor 2 acres for every £100. *per annum*, if of greater value; and such purchase money shall by s. 11. be raised by sale or exchange of part of the glebe or tithes of such living. And the governors of queen Anne's bounty are enabled by s. 12. to lend any sum not exceeding £100. with respect to such livings as shall not exceed the clear value of £50. or where the annual value shall exceed that sum, then any sum

sum not exceeding 2 years income of such living, upon mortgage for securing the repayment of such principal sum, but without interest.

The statutes which have been passed to encourage the building of houses, and making other improvements on church lands, and to prevent dilapidations, in Ireland, are very numerous; but I shall confine myself to stating their principal provisions:—By the 10 W. 3. c. 6. Ir. as amended by the 12 Geo. 1. c. 10. Ir.; 9 Geo. 2. c. 13. Ir.; 11 & 12 Geo. 3. c. 17. Ir.; and 40 Geo. 3. c. 82. Ir. every archbishop, bishop, or other ecclesiastical person that shall make, build, erect, add to, or repair any house, out-house, garden, orchard, or other necessary improvement, on any lands in his possession belonging to his see or church, that shall be certified to be fit for the residence of him and his successors, shall receive from his next successor, his executors or administrators, 3-4ths of the sum really expended in such buildings and improvements (necessary annual reparations only excepted); which sum shall be ascertained by certificate under the hand and seal of the chief governor for the time being, in the case of an archbishop; and of the archbishop of the province, in the case of a bishop; and by the like certificate of the bishop of the diocese in all other cases; (or in the absence of such archbishop or bishop from the kingdom, by their vicar-general;) and such certificate shall contain a true account of the clear yearly value or income of said archbishoprick, bishoprick, or living, (or union of bishopricks or livings), as the same shall be proved to be before such person who shall grant such certificate, and shall be entered in the registry of the diocese, and an exemplification thereof, under the hand and seal of the archbishop or bishop, shall be evidence, in case the original shall be lost, mislaid, or detained: and such successor having paid the 3-4ths of the sum so certified, his executors or administrators shall receive from his next successor 2-3ds thereof, that is, one moiety of the sum in the first certificate mentioned; which successor, having paid said moiety, his executors or administrators, shall receive from his next successor one-half thereof; to be recovered either by distress of any of the lands

*Building of
glebe-houses in
Ireland.*

10 W. 3. c. 6.
s. 1. & 8. Ir.
12 Geo. 1. c. 10.
s. 1. 2. 3. 4. Ir.
9 Geo. 2. c. 13.
s. 6. Ir.
11 & 12 Geo. 3.
c. 17. s. 6. Ir.
40 Geo. 3. c. 82.
s. 1. Ir.

*Apportionment
of expenses.*

*Certificate re-
quired.*

*Mode of reco-
vering appor-
tionment.*

lands or tenements of such archbishoprick, &c. belonging to such successor, or by sequestration of one moiety of the rents and profits of such see or benefice, (which sequestration is to be granted by the chief governor in the case of an archbishop, and by the archbishop of the province in the case of a bishop, and by the bishop of the diocess in all other cases;) or by action of debt in any court of record, at the election of the party suing for the same: But by the 12 Geo. 1. c. 10. s. 3. no successor shall be obliged to pay his predecessor, or his executors or administrators, any more than $1\frac{1}{2}$ year's income so limited as aforesaid. By s. 4. no certificate shall be given for any dwelling-house or building, unless the same be made of stone and lime, or brick and lime, and timbered in the roof and in the floors of such dwelling-house with oak or fir timber, (bog oak excepted) and covered with slates, shingles, or tiles (or copper by the 25 Geo. 3. c. 49.) and the building strong and durable; except livings under £100. a year, where such buildings may be covered with thatch, provided the timber is such as before specified. And by s. 7. of this act, as amended by the 9 Geo. 2. c. 13. s. 7. every archbishop, &c. intending to erect or make any building or improvement, shall a fortnight at least before he begins the same, give unto the person empowered to give such certificate as aforesaid, a writing subscribed with his hand in the presence of 2 witnesses, setting forth the length, breadth, height, and thickness of the wall of such house; with the number of stories to be contained therein, together with the situation of the ground on which the same is to stand, and also the nature and extent of all other improvements which he intends to make; a copy of which, if approved of, shall be returned unto such archbishop, &c. subscribed by the person unto whom the same is given; and if the said house or improvements, or so much thereof as shall be built or made before the death or removal of the incumbent undertaking the same, shall be found agreeable to such writing, and the value reported by commissioners, a certificate shall be given accordingly. By the 25 Geo. 3. c. 21. s. 1. Ir. though the completion of the works shall

not

12 Geo. 1. c. 10.
s. 3. Ir.

s. 4.

*Buildings to be
of good mate-
rials.*

25 Geo. 3. c. 49.
s. 8. Ir.

9 Geo. 2. c. 13.
s. 7 Ir.

*Notice of in-
tended improve-
ments.*

25 Geo. 3. c. 21.
s. 1. Ir.

not be prevented by death or removal, the certificate of the archbishop or bishop shall be as effectual, as if the whole plan proposed in such memorial had been completed before the granting of such certificate. The 17 Geo. 2. c. 8. s. 1. Ir. requires in case of intended repairs, an account in the general of the house, out-houses, or other buildings, and the several parts thereof, intended to be repaired, and of the sum intended to be laid out in such repairs, (except annual necessary repairs), to be delivered to the person empowered to grant such certificate, a fortnight before such repairs are begun. By the 12 Geo. 1. c. 10. s. 9. Ir. the chief governor and every archbishop and bishop, are respectively authorized to grant a commission to 2 or more persons, to view and examine the houses and improvements made on church lands, and to administer an oath to said commissioners, to return a true, just, and faithful account and estimate of the said buildings and improvements, according to the best of their skill and knowledge; and such commissioners shall have power to examine witnesses upon oath, upon any article of account given in, and alleged to be expended on said buildings, &c.

Certificate may be given though buildings not completed.

17 Geo. 2. c. 8. s. 1. Ir.

Notice of intended repairs.

12 Geo. 1. c. 10. s. 9. Ir.

Commissioners to view improvements.

The 9 Geo. 2. c. 13. s. 1. Ir. provides that every archbishop, bishop, or other ecclesiastical person entitled to receive 2-4ths or 1-4th of the money certified (as by 12 Geo. 1. c. 10.), who shall pay more than 1-4th of the money charged in such certificate, shall receive from his next successor, his executors or administrators, so much of the said 2-4ths or 1-4th as such archbishop, &c. shall have paid more than the 1-4th of the whole money charged in such certificate; to be recovered in like manner as if the whole money charged upon such archbishop, &c. had been paid according to the 10 W. 3. c. 6. and the 12 Geo. 1. c. 10. And this act further provides (s. 2.) that no archbishop, &c. shall be deemed a successor within the meaning of these acts, who shall die or be removed within one year from the death, translation, or removal of his immediate predecessor. But by s. 3. & 4. every archbishop, &c. who shall be first entitled to a year's profit of such archbishoprick, &c. shall be deemed the next

Apportionment recoverable, though predecessor has not paid the whole with which he was chargeable.

9 Geo. 2. c. 13. s. 1. Ir.

s. 2. 3. & 4.

Who deemed successors.

*Apportionment,
when payable.*

31 Geo. 3. c. 19.
s. 6. & 7. Ir.

*Apportionment,
though work not
completed.*

s. 8. & 9.

next successor, and shall pay one moiety of such sum as he is chargeable with, as soon as he is so become a successor, and the other moiety by 2 equal half-yearly payments within the next year. The 31 Geo. 3. c. 19. Ir. amends these acts by providing (s. 6. & 7.) that where any archbishop, &c. shall be removed or die, before he shall have completed the buildings or improvements, pursuant to the memorial prescribed and approved of according to these acts, such sum as shall appear by the return of the commissioners, (upon a commission specially framed for the purpose,) to be requisite for completing such buildings, &c. shall be deducted out of the sum which such archbishop, &c. his executors, &c. would have been entitled to receive by said acts, in case he had completed the same; and every archbishop, &c. his executors, &c. who shall die or be removed before he shall finish the said buildings, &c. shall obtain a certificate for the difference between the sum, which he or his executors would be entitled to receive, and such sum as shall be so returned to be necessary for completing such buildings, &c. And by s. 8. & 9. the successor of the person so dying or removed before the completion of said buildings, shall, after finishing the same agreeably to a memorial to be presented by him to the person authorized to approve of the same, obtain a certificate as directed by the 12 Geo. 1. c. 10. ascertaining the sum by him expended, and the value of the living, and be entitled to all the advantages thereby provided for the original builder; and his executors, &c. shall recover 3-4ths of the aggregate sum, composed of the sum by his executors, &c. paid to his predecessor, his executors, &c. and of the sum ascertained to be expended by him in finishing said buildings, &c. provided that such aggregate sum shall not exceed 1½ year's clear income of such archbishoprick, &c.; and the first successor of the person who shall have finished said buildings, &c. his executors, &c. shall receive from his next successor, his executors, &c. 2-3ds thereof, and such successor, his executors, &c. having paid said 2-3ds shall receive from his next successor, his executors, &c. one moiety of what he has so paid.

The

The 11 & 12 Geo. 3. c. 17. s. 3. Ir. enacts, that where *Apportionment, where buildings, &c. on new sites* any archbishop, bishop, or other ecclesiastical person shall obtain a certificate for erecting new buildings, or making other necessary improvements, on a new site, *11 & 12 Geo. 3. c. 17. s. 3. Ir.* within his demesne, glebe, or mensal lands, as directed by the 12 Geo. 1. c. 10. such archbishop, &c. shall instead of 3-4ths receive the full sum comprised in such certificate, not exceeding however 2 years clear income: but by s. 4. improvements, &c. to buildings formerly made are excepted. *s. 4.* And such successor having paid said sum, he his executors, &c. shall receive 3-4ths thereof from his next successor; and he, his executors, &c. shall receive 2-3ds thereof from his next successor; and he, his executors, &c. shall receive from his next successor one-half thereof, that is 1-4th of the sum in the certificate mentioned. This act was amended by the 13 & 14 Geo. 3. c. 27. s. 6. Ir. which *13 & 14 Geo. 3. c. 27. s. 6. Ir.* provided, that no archbishop, &c. should be entitled to a certificate for the full sum, (not exceeding however 2 years income), except he should previous thereto have completed the building or improvement, agreeable to a memorial approved of for that purpose, but should receive only 3-4ths of so much as should be expended before the death or removal of such archbishop, &c. But these acts are further amended by the 31 Geo. 3. c. 19. Ir. which *31 Geo. 3. c. 19. s. 1. & 2. Ir.* provides (s. 1. & 2.) that where any archbishop, &c. shall erect any new buildings or make other improvements on a new site as directed by these acts, and shall be removed or die before he shall have completed the same, such sum as shall appear by the return of the commissioners (upon a commission to be issued specially for such purpose) to be requisite for completing such buildings, &c. shall be deducted out of the sum to which such archbishop, &c. would have been entitled by the 11 & 12 Geo. 3. and 13 & 14 Geo. 3. in case he had completed the same before his death or removal; and every archbishop, &c. his executors, &c. who shall be removed or die before completing such building, &c. shall obtain a certificate for the difference between the sum so returned by the commissioners, and the sum to which he would have been entitled, in case said buildings, &c. had been completed. And by s. 3. *s. 3.* where any certificate shall be granted for buildings, &c.

which shall be left unfinished at the time of the death or removal of such archbishop, &c. the successor who shall be so chargeable as aforesaid, and who shall complete such buildings, &c. agreeable to a memorial duly approved of, and shall obtain a certificate according to the 12 Geo. 1. c. 10. ascertaining the sum expended in finishing said buildings, &c. and the yearly value of such archbishoprick, &c. shall be considered as the original builder or improver, and shall be entitled to all the advantages provided by the 11 & 12 Geo. 3. c. 17. and 13 & 14 Geo. 3. c. 27. and shall recover the sum so expended by him, added to the sum by him paid to his predecessor, his executors, &c.: but by s. 4. the aggregate sum to be so received, shall not exceed 2 years income of such archbishoprick, &c.; and the first successor of the person so finishing said buildings, &c. having paid said sum, shall recover 3-4ths thereof from his next successor; and so the 2d and 3d successor, and their several executors, &c. shall receive 2-3ds and 1-3d respectively.

s. 4.

*Apportionments,
when payable for
buildings on old
or new sites.*

31 Geo. 3. c. 19.
s. 5. 1r.

By the 31 Geo. 3. c. 19. s. 5. 1r. all ecclesiastical persons or their successors, their executors, &c. respectively, who shall have finished such buildings or improvements, pursuant to the 11 & 12 Geo. 3. c. 17. or 13 & 14 Geo. 3. c. 27. or to this act, shall be entitled to receive from their successors, their executors, &c. the sum so certified as aforesaid, in manner following, viz:—the first successor of the person who so finished said buildings, &c. shall pay one moiety of the 3-4ths at the end of one year after the death or removal of his predecessor, and the other moiety by two equal half-yearly payments, within the next year, but shall not be compellable to pay the remaining 4th until 3 years from the death or removal of his predecessor; and the other persons in succession, their executors, &c. shall pay the moiety of the sums, with which they are respectively chargeable, at the end of one year after the death or removal of their predecessors, and the other moiety by 2 equal half-yearly payments within the next year. And this act provides (s. 10.) that when any archbishop, &c. shall die or be removed, leaving any buildings, &c. whether on a new or old site, unfinished

s. 10.

finished, the immediate and every other successor of such archbishop, &c. his executors, &c. shall recover from their successors, their executors, &c. such portions of the money paid by them, by virtue of a certificate granted under this act, to their predecessor or predecessors or their executors, &c. as appointed to be paid to persons making buildings, &c. by the 12 Geo. 1. c. 10. and at such times and in such manner as directed by the 9 Geo. 2. c. 13. Ir.

*Successors may recover appor-
tions, though
buildings not
completed.*

Besides these acts for the encouragement of building glebe houses, there are some Irish statutes also which contain provisions for enforcing this duty of residence, and for compelling the building of such houses. The 1

*Building of
glebe-houses en-
forced.*

*1 Geo. 2. c. 15.
s. 5. Ir.*

Geo. 2. c. 15. s. 5. Ir. for this purpose provides, that every rector, vicar, curate, or other ecclesiastical person who shall be admitted into any ecclesiastical benefice, of the yearly value of £150. or upwards, having no house fit for the residence of the incumbent thereof, and being endowed with glebe land lying near his parish church fit and convenient for building, shall within a certain time to be appointed by the archbishop or bishop of the diocese, after he has been 2 years in possession of such benefice, build and improve upon such glebe-land, by erecting one dwelling-house of stone and lime, or brick and lime, and timbered in the roof and in the floors of such dwelling-house with oak or fir timber, (bog oak excepted) and covered with slates, shingles, or tiles: and in case any such rector or vicar shall neglect or refuse so to do, the bishop of the diocese, with the consent of the archbishop of the province, under his archiepiscopal seal, or if such benefice be within the diocese of an archbishop, then such archbishop with the consent of the chief governor, &c. under his hand and seal, may sequester a fourth part of the profits of such benefice, till a sum not exceeding 1½ years income be received; which sum such archbishop or bishop shall cause to be laid out, in making such building and improvement upon such glebe-land.

And by the 31 Geo. 2. c. 11. s. 1. Ir. every person who shall accept of any deanery, archdeaconry, dignity, prebend, or of one or more rectories having no vicarage endowed, vicarage perpetual, curacy, or other ecclesiastical prefer-

*31 Geo. 2. c. 11.
s. 1. Ir.*

ment, with cure of souls belonging thereto, which either singly, or jointly, or together with what at the time of his acceptance thereof he shall enjoy in the same diocess, shall make up the sum of £100. *per annum*, shall, after he hath been 3 years in possession thereof from the time of his admission, and having no house thereon fit and convenient for his residence, and any one of such benefices being endowed with such portion of glebe-land as the archbishop or bishop of the diocess shall judge fit and convenient for building thereon, within a time to be limited by such archbishop or bishop, build and improve on such glebe land, in such manner, with such consent, under such rules and limitations, and with such benefits and advantages, and be entitled to such proportion of the money laid out in building and improving on such glebe-lands, as in the 1 Geo. 2. c. 15. mentioned. And by s. 2. every archbishop, &c. shall have the like power to oblige such persons to build, &c. as provided by the 1 Geo. 2. c. 15. which by s. 8. & 11. entitles any ecclesiastical person, who shall build or improve on any land granted for glebe in pursuance of this act, to recover 3-4ths of the money certified, from his successor, who shall receive 2-4ths from the next successor, who shall receive from his successor 1-4th of the sum in the first certificate mentioned, according to the 12 Geo. 1. c. 10., not exceeding however $1\frac{1}{2}$ year's income. But by s. 3. no dignitary, or other incumbent, shall be obliged by this act to build a house upon the glebe belonging to any benefice, the value of which shall not, *communibus annis*, amount to £50., unless such incumbent shall previously obtain from the trustees of the first fruits a sum not less than £50., which sum they are hereby empowered to grant for such purpose.

Trustees of first
fruits empowered
to advance mo-
ney for these
purposes.

8 Geo. 1. c. 12.
s. 7. l.

The trustees of first fruits were also empowered by the 8 Geo. 1. c. 12. s. 7. l. to pay to any incumbent or minister having cure of souls, his executors, &c. any sum not exceeding £100. towards reimbursing the charge of building a convenient dwelling-house covered with shingles, slates, or tiles, upon the glebe belonging to his benefice;

benefice; such incumbent tendering to said trustees a certificate of such improvement, under the hand and seal of the archbishop or bishop of the diocese. But by s. 8. such sum shall not be comprised in the bishop's certificate to be granted under the 10 W. 3. c. 6.* And by the 11 & 12 Geo. 3. c. 16. s. 3. Ir. the trustees of first fruits were also empowered to grant to any curate who should succeed to a perpetual curacy, endowed by this or any other act of parliament, any sum not exceeding £150. to enable such curate to build such house, upon an assurance that such house should be built upon a plan and estimate approved of by the archbishop and bishop respectively, and by the said trustees. And by s. 9. they are in like manner empowered to grant the like sum to any curate for building a house, whose cure shall be appropriate to some deanery, archdeaconry, or other dignity, and which shall have been made a perpetual cure, and endowed with a sufficient quantity of glebe. And this provision of this act is extended to cures of parishes appropriate to any archbishoprick or bishoprick, by the 23 & 24 Geo. 3. c. 49. s. 1. Ir. The 48 Geo. 3. c. 65. s. 10. I. recites the above Irish acts (8 Geo. 1. c. 12. and 11 & 12 Geo. 3. c. 16.) and that it is expedient that the said sums should be increased in certain cases; and therefore enacts, that where the annual value of any benefice shall not exceed £200., it shall be lawful for the said trustees to pay any sum not exceeding £400.; and where it shall exceed £200., and not exceed £250., to pay any sum not exceeding £350.; and where it shall exceed £250., and not exceed £300., to pay any sum not exceeding £300.; and where it shall exceed £300., and not exceed £350., to pay any sum not exceeding £250.; and where it shall exceed £350., and not exceed £400., to pay any sum not exceeding £200.; and for every benefice the annual value of which shall not exceed £100., and for every perpetual curacy, to pay any sum not exceeding £450., as the trustees shall think fit, to such incumbents or perpetual curates, their executors, administrators, and assigns, towards defraying the charge, which such incumbent, &c. may incur or have been at in building any such dwelling-house;

s. 8.

* Ante page 333

11 & 12 Geo. 3. c. 16. s. 3. Ir.

s. 9.

23 & 24 Geo. 3.
c. 49. s. 1. Ir.
48 Geo. 3. c. 65.
s. 10. I.

house: and they are hereby empowered to pay any of the said sums in advance, and in such proportions and by such instalments as they shall think fit, before such house is begun to be built, upon an assurance that such house shall be built upon a plan and estimate approved of in such manner as in the 11 & 12 Geo. 3. c. 16. is directed; provided that the last of said instalments shall be £100., and that such instalment shall not be paid, until a certificate shall be tendered as directed by the 8 Geo. 1. c. 12. Ir. and unless it shall appear by said certificate, that the whole amount of the sum granted by the trustees has been duly expended in addition to the amount of the value of 2 years income of the benefice, or in case of a perpetual curacy in addition to the sum of £50.; provided also that where the annual value of any benefice shall exceed £400., the trustees may pay £100. and no more, in manner directed by the 8 Geo. 1. c. 12. And for ascertaining the clear improved yearly value of such small benefices, this act (s. 12.) empowers and requires the archbishops and bishops of every diocess, by the oath of 2 or more witnesses (which oath they or any person commissioned by them under their hands and archiepiscopal or episcopal seals may administer) as by all other lawful ways, to inform themselves of the clear yearly value of every benefice with cure of souls, living, or curacy appropriate or impropriate, and of the maintenance of every parson, vicar, curate, or minister, who shall apply to receive the said increased sum, and to certify the same under their hands and seals to the trustees, &c. of first fruits. And this act (as already observed, page 173) directs the application of the sum of £50,000. which was granted by the 43 Geo. 3. c. 158. for building glebe-houses in Ireland, and for this purpose enacts (s. 11.) that the treasury of Ireland shall pay out of said £50,000. the respective sums which the trustees, &c. of first fruits are empowered by this act to pay, in aid of the erection of glebe houses, upon such certificate of the treasurer of the said trustees, as is directed by s. 7. of this act: and for securing the due application of the money granted, the archbishop or bishop of the diocess may by (s. 13.) sequester the profits

s. 12.

s. 11.

s. 7.

s. 13.

profits of the benefice, if upon inquiry by commissioners to be appointed by such archbishop, &c. it shall appear that the money hath not been duly expended, and that such incumbent shall not complete the same, within 6 months after the date and delivery of an order for that purpose. And by this clause of the act the incumbent and all other persons shall be liable to the repayment of the money so advanced, and to the payment of interest, and to all other rules and regulations contained in the 43 Geo. 3. c. 158. s. 2. which refers to the 43 Geo. 3. c. 106. which provides (s. 1.), that the trustees and com-
43Geo.3.c.106.
s. 1. Ir.
missioners of first fruits in Ireland may from time to time, and in such proportion as they shall think proper, advance out of the funds entrusted to their care to the incumbent of any benefice, parish, or union of parishes, who shall apply for aid, any sum not exceeding 2 years net income of such benefice, &c. to be applied to the purposes of building a glebe-house and offices, and making other improvements, or in the purchase of a house already built, for the suitable residence of such incumbent and his successors, or in the purchase of glebe or demesne lands fit for the erection of such glebe-house and offices. But by s. 4. the trustees shall previously take a bond to the king for repayment of the same with interest. And by s. 2. the incumbent of such benefice and his successors shall repay so much of the said sum so advanced, as shall become due during their respective incumbencies, to the trustees, by annual instalments of £6. *per cent.*; the first of which instalments shall be made on the 1st July next after one year from the day on which the last sum shall be advanced, (or within 21 days after); £6. *per cent.* more on the 1st July, (or within 21 days after,) in every succeeding year, until £96. shall be paid; and the remaining £4. on the 1st day of July (or within 21 days after) in the year succeeding that in which the last instalment making £96. shall have been paid. And by s. 12. the trustees may require interest if they think fit. And this act (s. 5.) provides for enforcing such payment by sequestering the profits of such benefice, &c.

The law of Ireland has not only promoted this duty of residence by encouraging, and in some cases by compelling

*Purchases, ex-
changes, and
endowments of
glebes legalized.*
10 W. 3. c. 6.
s. 2. Ir.
11 & 12 Geo. 3.
c. 17. s. 1. & 2. Ir.

ling the building of glebe-houses, but by authorizing the purchase and exchange of glebes. The 10 W. 3. c. 6. s. 2. Ir. (as amended by the 11 & 12 Geo. 3. c. 17. s. 1. & 2.) enacts, that it shall be lawful for any archbishop with the approbation of the chief governor, or for any bishop with the approbation of the archbishop of the province, and for any other ecclesiastical person with the consent of the bishop of his diocess, certified in writing under their hands and seals, to purchase to them and their successors within their respective dioceses, houses already built with conveniences thereunto belonging, or lands and tenements fit for such buildings, &c. for their habitation, to be part of their demesne, glebe, or mensal land, unalienable, and not to be let or disposed of to any other use whatsoever; and the purchase money for the same, and the charges of buildings, additions, and repairs, being ascertained and certified, shall be repaid in the proportions, at the times, and in the manner directed by the 12 Geo. 1. c. 10. (*ante* page 333.) And a fee farm lease, or a lease of lives with a covenant of renewal for ever, shall be deemed to be a purchase, and a ground-rent may be reserved out of the premises so purchased.

8 Geo. 1. c. 12.
s. 4. Ir.

It is also a provision of the 8 Geo. 1. c. 12. s. 4. Ir. that if any incumbent shall purchase glebe-land, and endow his church with the same, reserving no rent thereout, he, his executors, &c.; shall be entitled to 2-3ds of his purchase-money, to be paid by his immediate successor, his executors, &c.; and such successor, his executors, &c. shall be entitled to one half of what he shall so pay; which sums shall be paid and recovered at such times and in such manner as provided by 10 W. 3. c. 6. in respect to money laid out in buildings, &c. By the following Irish statutes 15 Car. 1. c. 11.; 2 Geo. 1. c. 14.; 8 Geo. 1. c. 12.; 10 Geo. 1. c. 6.; 1 Geo. 2. c. 15.; 3 Geo. 2. c. 12.; 31 Geo. 2. c. 11.; 11 & 12 Geo. 3. c. 16.; 13 & 14 Geo. 3. c. 27.; 15 & 16 Geo. 3. c. 17.; and 23 & 24 Geo. 3. c. 49. archbishops, bishops, deans, dignitaries, and prebendaries, deans and chapters, or any ecclesiastical or lay corporation, as also tenants in fee, in tail, or for life, in possession, are enabled to endow with glebe any church, chapel,

chapel, or perpetual curacy, though such church, &c. should be in possession of more than 10 and under 20 acres of glebe-land; provided however that such lands so granted, together with all other glebe belonging to such church, &c. shall not exceed 40 acres plantation Number of acres limited. measure. And a capacity is given by these statutes to the church, to receive such endowments without license of mortmain. The 3 Geo. 2. c. 12. s. 2. Ir. provides that 3 Geo. 2. c. 12. s. 2. Ir. where any tenant for life shall grant any lands for a glebe in pursuance of this act, the sheriff of the county, Glebe valued where granted by tenant for life. at the request of the archbishop or bishop and also of the grantor and grantee, shall inquire by the oaths of 12 freeholders of said county, of which notice shall be given at some preceding county court, and upon the oaths of such witnesses as shall be produced by either party, of the best and most improved rent and full yearly value, and quantity of the lands, so to be granted, which oaths the sheriff is to administer; and the said sheriff shall return the yearly value so found, together with the mears and bounds thereof, to the archbishop or bishop, who shall procure the return, certificate, and deeds of grant to be recorded in the exchequer; and a fee of 10s. and no more shall be paid to the sheriff, and 6s. 8d. to the remembrancer by the grantee; and the said yearly value shall be for ever the rent payable out of said lands; and the said inquest so recorded shall be conclusive against the grantor and all persons in reversion, remainder, or expectancy. By the 31 Geo. 2. c. 11. any bishop, Exchanges of Glebes. dean, dean and chapter, dignitary, or prebendary, may grant land for glebe to be exchanged for other lands lying nearer the church, and more convenient for the residence of any incumbent, or curate of any appropriate benefice. And the 13 & 14 Geo. 3. c. 27. Ir.; 15 & 16 Geo. 3. c. 17. Ir.; and 23 & 24 Geo. 3. c. 49. Ir. also enable any tenant for life, or tenant in tail, in possession, with remainder to his issue, to grant such part of their lands (except the demesne lands) which shall lie convenient for glebe, in exchange for the glebe lying at a distance, or such part thereof as shall appear to be of equal value, as fully as if the person so seised had an estate in fee simple,

23 & 24 Geo. 3.
c. 49. s. 7. Ir.

*Consent re-
quired for ex-
change of
glebes.*

ple; but every such exchange must be perfected within 2 years after making such grants, or be void. The 23 & 24 Geo. 3. c. 49. s. 7. Ir. provides, that the consent of the bishop of the diocess with his dean and chapter under their common seals, or of the patron of the church or his attorney, under his hand and seal, where the patronage is not in the bishop, or of the chief governor in writing under his hand and seal where the patronage is in the crown, shall be given to such deeds of exchange; and prescribes the same mode as the 3 Geo. 2. c. 12. *supra*, for ascertaining the value, quantity, and conveniency of the lands so to be exchanged, by a jury impannelled by the sheriff at the request of the bishop, patron, and parties concerned.

*Alienation of
glebes re-
strained.*

10 W. 3. c. 6.
s. 7. Ir.

To prevent the alienation of glebes, the 10 W. 3. c. 6. s. 7. Ir. enacts, that it shall not be lawful for any rector, vicar, curate, or other ecclesiastical person, having a glebe fit and convenient to be built and improved upon for the residence of him and his successors, or whereon a mansion-house shall be built, or contiguous and convenient to such house, to alien, set, let, or demise such glebe or any part thereof for any longer term than one year, in possession and not in reversion; and all other alienations, leases or contracts for leases thereof shall be

1 Geo. 2. c. 15.
s. 4. Ir.

void. The 1 Geo. 2. c. 15. s. 4. Ir. also prohibits such ecclesiastical persons from setting any land granted for glebe, according to this act and the other acts therein recited, and provides that the officiating curate shall occupy said lands in the absence of the rector, &c. who should have another benefice. And the clauses of the 10

10 & 11 Car. 1.
c. 3. s. 2. Ir.

35 Geo. 3. c. 23.
s. 1. Ir.

& 11 Car. 1. c. 3. Ir. and 35 Geo. 3. c. 23. Ir. which enable ecclesiastical persons to make certain leases, expressly except the dwelling house and demesne lands belonging to the church, and to the ecclesiastical persons enumerated in these statutes.

*Benefices—in
what cases void.*

With respect to the ways by which one may cease to be a parson or vicar, the provisions of some statutes have been already stated, (pages 291. & 324.) which declare a benefice void, for neglecting after institution to read the liturgy according to the book of common prayer, or for not taking the oaths of allegiance, supremacy, and ab-
juration,

juration; and the statutes for enforcing the residence of spiritual persons also declare benefices void, in cases of continued or repeated non-residence. The 1 W. & M. c. 26. Eng. which vests in the two universities the presentations of benefices belonging to papists, provides (s. 6.) that if any person so presented or nominated shall be absent from the same above the space of 60 days in any one year, the benefice shall be void. By the 21 Hen. 8. c. 13. s. 9. Eng. if any person having one benefice with cure of souls, being of the yearly value of £8. or above, accept any other with cure of souls, and be instituted and inducted in possession of the same, the first benefice shall be adjudged void. But by s. 13. all spiritual men of the king's council may purchase a license or dispensation, and keep 3 parsonages or benefices with cure of souls: and the chaplains of the king or queen, prince or princess, or of any of the king's children, brethren, sisters, uncles, or aunts, may in like manner take, retain and keep 2 benefices with cure of souls; and so also the 6 chaplains of every archbishop and duke; and the 5 chaplains of every marquis and earl; and the 4 chaplains of every viscount and bishop; and the 3 chaplains of the lord chancellor of England, and of every baron, and knight; and the 2 chaplains of every duchess, marchioness, countess, and baroness, being widows: and so also the treasurer and comptroller of the king's house, the king's secretary, and dean of the chapel, the king's almoner, and master of the rolls, may have 2 chaplains; and the chief justice of the king's bench, and the warden of the cinque ports each one, who may also purchase licenses, and have 2 benefices with cure of souls: and the brethren and sons of all temporal lords, who are born in wedlock, may purchase dispensations, and have as many benefices with cure as the chaplains of a duke or archbishop: and the brethren and sons of every knight may every of them purchase a dispensation, and hold 2 benefices with cure of souls. And by s. 23. all doctors, and bachelors of divinity, doctors of law, and bachelors of the canon law, which shall be admitted to said degrees by any of the universities, may purchase license and have 2 benefices

1 W. & M. c. 26.
s. 6. Eng.

21 Hen. 8. c. 13.
s. 9. Eng.

s. 13. to 25.

*What persons
may obtain dis-
pensations for
pluralities.*

2 benefices with cure. And by s. 24. every archbishop and bishop may have each 2 chaplains in addition to the number above limited, who may each purchase a dispensation and have 2 benefices with cure of souls. It seems to be questionable whether the Act of Faculties in Ireland (28 Hen. 8. c. 19.) has adopted this statute of pluralities, by reciting and adopting "The Act concerning Peterpence and Dispensations," (25 Hen. 8. c. 21. Eng.) which refers to the Act of Pluralities, and declares, "that nothing herein shall give license to any person to have more benefices than is limited in said act." The 36 Geo. 3. c. 83. s. 3. Eng. enacts, that such churches, curacies, and chapels as shall be augmented by the governors of queen Anne's bounty, (according to the provision of the 1 Geo. 1. st. 2. c. 10. Eng.) shall be considered as benefices presentative, so as that the license thereto shall operate in the same manner as institution to such benefices, and shall render voidable other livings. The 29 Geo. 2. c. 18. Ir. which provides for the augmentation of poor livings by the board of first fruits in Ireland, enacts (s. 12.) that in case the incumbent of any benefice, living, or curacy, or any parson, vicar, curate, or minister, whose maintenance shall be augmented by the grant of an annual salary or otherwise, shall accept of any other benefice, living, or curacy, and be instituted and inducted into the same, then the said benefice, &c. so augmented shall be void, and the archbishop, bishop, or other patron may collate or present thereto; and any license, union, or dispensation to the contrary shall be void: and in case any person possessed of any benefice, &c. shall be collated or instituted to any benefice which shall be so augmented by said trustees, every such collation, presentation, or nomination shall be void. By the 17 & 18 Car. 2. c. 10. Ir. every person having any bishoprick, benefice, or other ecclesiastical dignity or promotion, in England or Wales, shall during the time of his holding the same, be incapable of holding any bishoprick, &c. in Ireland; and any grant or presentation of the bishoprick, &c. in Ireland, to any person having at the time any bishoprick, &c. in England, shall be void; and from thenceforth the king, or any other patron or donor, may grant, present, or collate

28 Hen. 8. c. 19.
Ir.

36 Geo. 3. c. 83.
s. 3. Eng.

29 Geo. 2. c. 18.
Ir.

17 & 18 Car. 2.
c. 10. Ir.

*Incompatible to
hold benefices in
England, &c.
and Ireland.*

collate to the same. And if any person having any bishoprick, &c. in Ireland, shall accept of, hold, or enjoy any bishoprick, &c. in England or Wales, any former grant or presentation of any bishoprick, &c. in Ireland to such person shall be immediately void, as if such bishop, &c. had died or resigned, notwithstanding any license or dispensation to the contrary; and the king or other patron or donor, may present or collate thereto.

The statutes which declare benefices void for certain malfeasances or crimes, belong to another part of this Digest.

III. For the better support and maintenance of *curates* § 3.
 the 36 Geo. 3. c. 83. s. 1. Eng. and 40 Geo. 3. c. 27. s. 1. Ir. *Maintenance of curates.*
 enact, that it shall be lawful for the bishop or ordinary 36 Geo. 3. c. 83.
 to appoint, under his hand and seal, any stipend or al- Eng.
 lowance for any curate heretofore nominated or employed, 40 Geo. 3. c. 27,
 or hereafter to be nominated, &c. not exceeding £75. Ir.
per annum, over and besides, on livings where the rector or vicar does not personally reside 4 months in the year, the use of the rectory or vicarage house, and the garden and stable thereunto belonging, for the space of 12 calendar months; with power in said bishop, &c. to renew the grant from time to time; or a further sum not exceeding £15. *per annum* in lieu of such house, &c. in case there shall be none such, or if it shall appear to the bishop, &c. not to be convenient to allot and assign the same to such curate. And these statutes respectively refer to the 12 Ann. st. 2. c. 12. Eng. and 1 Geo. 2. c. 22. Ir. 12 Ann. st. 2.
 which provide that in case any difference shall arise be- c. 12. Eng.
 tween any rector or vicar and his curate, touching the 1 Geo. 2. c. 22.
 stipend or allowance (which by these acts was not to ex- Ir.
 ceed £50. nor to be less than £20.) or the payment thereof, the bishop, &c. on complaint made shall summarily hear and determine the same, and in case of neglect or refusal to pay such stipend may sequester the profits of such benefice. The 36 Geo. 3. c. 83. and 40 Geo. 3. c. 27. also respectively provide, that the bishop, &c. may under his hand and seal revoke the grant to the said curate of the said house, &c. and insert in such grant such terms and conditions as he shall think reasonable; and
 in

in case the curate shall refuse to deliver up possession thereof at the expiration of the grant, he shall forfeit to such rector, &c. such parts of his stipend as shall be then unpaid, as also the sum of £50. to be recovered by action of debt. And by these acts respectively it shall be lawful for the ordinary to license any curate who is or shall be employed by the rector, vicar, or other incumbent of any parish church, or chapel, although no express nomination of such curate shall have been made to the ordinary by said rector, &c.; and the ordinary shall also have power to revoke, summarily and without process, any license granted to any curate employed within his jurisdiction, and to remove such curate for reasonable cause, subject to an appeal, either in the case of a grant or revocation of any such license, to the archbishop of the province, to be determined in a summary manner.

36 Geo. 3. c. 83. s. 5. Eng. The 36 Geo. 3. c. 83. Eng. contains a provision (s. 5.) peculiar to itself, by enacting that the ordinary shall have the same power to apportion the stipends to be paid to the officiating curates, by the curates or incumbents of perpetual curacies, although not augmented by the bounty of queen Anne. The 6 Geo. 1. c. 13. Ir. provides, (which is also referred to by the 40 Geo. 3. c. 27. s. 2.) that one curate and no more shall be appointed, for benefices possessed by episcopal union which lie contiguous, and where the extent of them doth not exceed 3 miles from the church.

Curates of
united parishes.

§ 4. IV. By the 1 Geo. 1. st. 2. c. 10. s. 4. Eng. all curacies, &c. augmented by the governors of queen Anne's bounty shall be *perpetual cures*, and the ministers duly nominated and licensed thereunto, and their successors, shall be bodies politick, and shall be enabled to take lands, &c. in perpetuity. The 1 Geo. 2. c. 18. s. 7. Ir. contains the same provision as to curacies augmented, erected, and endowed, by virtue of this act. And the 29 Geo. 2. c. 18. s. 14. Ir. provides in like manner in respect to curacies augmented by the trustees and commissioners of first fruits. By the 11 & 12 Geo. 3. c. 16. s. 2. Ir. all chapels of ease erected in large parishes by virtue

Perpetual cures.
1 Geo. 1. st. 2.
c. 10. s. 4. Eng.

1 Geo. 2. c. 18.
s. 7. Ir.

29 Geo. 2. c. 18.
s. 14. Ir.

11 & 12 Geo. 3.
c. 16. s. 2. Ir.

virtue of this and former acts, shall be deemed perpetual cures ; and the curates of them, when duly nominated and licensed, shall be capable of receiving any endowment in like manner as the curates of impropriate parishes, and shall have perpetual succession, and be bodies corporate, &c. ; and when endowed with sufficient glebe, may, with the approbation of the archbishop or bishop, make such buildings and improvement thereon, and shall receive such proportion of the money expended from their next successors, as other incumbents. Provided (s. 3.) that no curate, who shall hereafter succeed to a perpetual curacy, endowed by this act, or any other act, shall be obliged to pay to his predecessor for such buildings, &c. more than £50. And by s. 9. of this act as explained by the 13 & 14 Geo. 3. c. 27. s. 4. Ir. cures appropriate and annexed to deaneries, archdeaconries, and other dignities, shall be deemed perpetual cures, with the consent in writing under the respective hands and seals of the archbishop of the province, as also of the bishop and dean and chapter of the diocese, and of the dignitaries to whom such parishes with cure of souls are appropriate, from the time that such consents shall be entered in the registry of the diocese, and in the registry of the metropolitical court of the province : and the curates thereof shall be capable of receiving any endowment, and shall have perpetual succession, &c. and when endowed with sufficient glebe, may, with the approbation of the archbishop or bishop, make such buildings and improvements thereon, and be entitled to receive the money expended from their next successors, as other incumbents. The 23 & 24 Geo. 3. c. 49. Ir. contains the same provisions in respect to cures appropriate to archbishopricks and bishopricks ; but in the case of archbishopricks the consent of the archbishop and dean and chapter ; and in the case of bishopricks, the consent of the archbishop, bishop, and dean and chapter ; or if no dean and chapter, the consent of the archdeacon and majority of the rest of the beneficed clergy in synod or at visitation, must be obtained, and registered in the metropolitan court in the former case, and

s. 9.

13&14 Geo. 3.
c. 27. s. 4. Ir.*Cures appropriate to deaneries, &c.*23&24 Geo. 3.
c. 49. Ir.*Cures appropriate to archbishopricks, &c.*

in the metropolitan and diocesan courts in the latter. By s. 8. the archbishop, with the consent of his dean and chapter, and the bishop, with the consent of the archbishop, patron, and dean and chapter, or if no dean and chapter, then of the majority of the beneficed clergy of the diocese, under their hands and seals, may unite 2 or more such appropriate parishes in one perpetual cure, so as the entire value shall not exceed £100. a year.

§. 5.

*Church wardens
—their appoint-
ment.*

25 Geo. 3. c. 58.
s. 3. Ir.

12 Geo. 1. c. 9.
s. 7. Ir.

*Catholics ex-
cluded from vo-
ting.*

10 Geo. 1. c. 6.
s. 2. Ir.

6 Geo. 1. c. 5.
s. 4. 5 & 7. Ir.

33 Geo. 3. c. 21.
s. 4. Ir.

19 Geo. 2. c. 16.
s. 3. Ir.

33 Geo. 2. c. 11.
s. 4. Ir.

V. To remove the doubts which had arisen concerning the right of electing and appointing churchwardens, the 25 Geo. 3. c. 58. s. 3. Ir. enacts, that their election and appointment shall be by the same persons as are by law authorized and qualified to vote in vestry for the repairing of churches. This statute seems to refer to the 12 Geo. 1. c. 9. s. 7. Ir. which enacts, for the preventing of papists having it in their power to obstruct the rebuilding and repairing churches, by out-voting the protestant inhabitants, that no inhabitant of any parish in Ireland, being a papist, shall be capable of giving his vote at any vestry to be held for the purposes aforesaid. And for the same reason, the parishioners whose consent for the building of new churches was made necessary by the 2 Geo. 1. c. 14. Ir. were required to be exclusively protestants by the 10 Geo. 1. c. 6. s. 2. Ir. The 6 Geo. 1. c. 5. Ir. which has followed the 1 W. & M. st. 1. c. 18. Eng. *ante* p. 296. in providing that protestant dissenters may execute the office of church-warden by deputy, provides (s. 7.) that no bishop of any diocese, or other ordinary, shall be obliged to approve the same person as deputy church-warden for the same parish or place 2 years successively. The 33 Geo. 3. c. 21. Ir. which removes the disabilities of catholics, with certain exceptions, provides (s. 4.) that nothing herein contained shall extend to give papists, &c. a right to vote at any vestry for levying of money to rebuild or repair any parish-church, or respecting the demising or disposal of the income of any estate belonging to any church or parish, or for the salary of the parish clerk, or at the election of any church-warden. By the 19 Geo. 2. c. 16. s. 3. Ir. and 33 Geo. 2. c. 11. s. 4. Ir. churchwardens are enabled to take a grant to them and their

their successors, of one acre, as a site for any new church and church-yard. And by several Irish statutes (12 Geo. 1. c. 9. 3 Geo. 2. c. 11. 11 & 12 Geo. 3. c. 16. 29 Geo. 3. c. 27. and 40 Geo. 3. c. 83.) it is the duty of the church-wardens to applot and levy a cess or rate upon the respective parishes, for the building, rebuilding, and repairing churches: but by the law of England the rates for their repairs, are recoverable only in the ecclesiastical courts; and no statute of a general nature has made provision for building or rebuilding churches in England at the expense of the respective parishes. The 43 Geo. 3. c. 108. U. K. is "an act to promote the building, repairing, or otherwise providing of churches and chapels, and of houses for the residence of ministers, and the providing of church-yards and glebes," and enables persons by deed or will to give lands not exceeding 5 acres, or goods and chattels not exceeding £500. for these purposes. And it is a provision of this act, that in every parochial church or chapel hereafter to be erected, ample provision shall be made for the decent and suitable accommodation of all persons of what rank or degree soever, who may be entitled to resort to the same, and whose circumstances may render them unable to pay for such accommodation. It has been already stated* that the funds in the hands of the board of first fruits, as also the parliamentary grant of £50,000. are made in part applicable to the purpose of building churches in Ireland.

Rates for building, &c. churches.

43 Geo. 3. c. 108
U. K.

Power to grant lands, &c. for the purpose.

s. 5.

*Ante p. 173.

Amongst the other rates which church-wardens are authorized and directed to levy upon their parishes in Ireland, is that of ministers' money, in respect to which the 17 & 18 Car. 2. c. 7. Ir. (which may be here stated) enacts, that the chief governor, and 6 or more of the privy council, may allot any sum of money to be paid to the several incumbents within the city and suburbs of Dublin, and liberties thereunto adjoining, and other cities and towns corporate, having actual cure of souls, out of each house belonging to the parish, by apportioning the money according to the yearly value of each house, or otherwise, not exceeding 12*d.* in the pound of the yearly value of each house; such value to be ascer-

Ministers money to be levied by church-wardens.

17 & 18 Car. 2.
c. 7. s. 1. Ir.

*Commission of
valuation.*

*Duty of church-
wardens en-
forced.*

s. 7.

s. 2.

Proviso.

*Church-wardens
compellable to
account.*

3 Geo. 2. c. 11.
Ir.

21 & 22 Geo. 3.
c. 52. Ir.

*What shall be
evidence of due
election of
church wardens.*

23 & 24 Geo. 3.
c. 49. s. 10. Ir.

tained upon oath, by persons nominated and authorized by commission under the great seal, by the direction of the chief governor; but no house shall be returned by the commissioners at above £60. *per annum*; and such commissions shall be returned under the hands and seals of the commissioners, to the clerk of the council; and such allotment when approved of by the chief governor and council, shall be a charge upon each house, and be received by the church-wardens, and by them paid to the respective incumbents, by 4 equal portions in every year, *viz.* the feast of the nativity, &c; the feast of the annunciation, &c.; the feast of St. John the Baptist; and the feast of St Michael the archangel; and in case of the delay or refusal of any inhabitant to pay the sum allotted at any of said days, the church-wardens may levy the same by distress and sale; and the church-wardens if they fail to do their duty, shall be punished as the governor and council shall think fit: but such punishment shall not (by s. 7.) exceed a fine of £5. and imprisonment for one month. By s. 2. no commission shall issue into any parish for valuation of any houses hereafter to be built, oftener than once in 3 years.

The 3 Geo. 2. c. 11. Ir. which prescribes the mode of applotting parish cesses or taxes for the repairs of churches or chapels, or other necessary charges, and regulates the duty of church-wardens in respect thereto, is enforced by the 21 & 22 Geo. 3. c. 52. Ir. which provides, that where church-wardens shall neglect, for 6 calendar months, to sue their predecessors for neglect or refusal to collect parish cesses, or for the balance of their accounts, or to prosecute such suits with effect, the bishop or ordinary may sue the church-wardens, so neglecting, &c. to sue their predecessors, and recover all sums contained in any applotments delivered to such predecessors, or the balance of such accounts, by civil bill, if the sum claimed by the bishop, &c. does not exceed £20. or otherwise by action of debt, &c. in any of the Four-courts in Dublin.

By the 23 & 24 Geo. 3. c. 49. s. 10. Ir. every person who shall be duly elected or nominated a church-warden, shall, after 6 weeks from the entry of his election, &c. in the vestry-book of the parish, union, or chapelry, be deemed

deemed to be legal church-warden, although he shall have neglected or refused to take the usual oath of office in the manner prescribed by law; and the entry of such election, &c. in the vestry-book of the parish, &c. and signed by the rector, vicar, or curate, and 3 of the parishioners then present, shall be conclusive evidence of such election, &c. although not signed by such church-warden.

VI. Next as to *parish-clerks*, the 33 Geo. 2. c. 11. Ir. § 6. as amended by the 25 Geo. 3. c. 58. Ir. enacts, that in every parish, or union of parishes, or town that has a church or chapel of ease, and service, a vestry shall be held on Monday or Tuesday in Easter-week, for assessing the clerk's salary, which is not to exceed £20. nor to be under £10., where the service is usually celebrated on common week-days as well as on Sundays and other festivals, or otherwise the sum shall not exceed £10. nor be under £5.; which respective sums shall, within 30 days after Easter-Sunday in every year, be apportioned in like manner as cesses for the repairs of the church, and be paid by the church-wardens; and they are accordingly enabled to recover such salary by civil bill against the church-wardens, where they shall neglect or refuse to collect and pay the same, who may recover over against the parish: and if any such parish or union shall neglect to assess or apportion such salary, the clerks may also have the same remedy by civil bill; or 2 justices of peace may apportion the same by examination on oath, and authorize it to be levied by the parish-clerk by distress and sale. These acts are peculiar to Ireland.

VII. Lastly as to *sextons*, the statute 23 & 24 Geo. 3. c. 49. Ir. is peculiar to Ireland, which provides (s. 9.) that it shall be lawful for the archbishop or bishop of the diocese, where any vicarage or curacy appropriate shall be endowed in pursuance of any act now in force, by writing under his hand and archiepiscopal or episcopal seal, to allocate any part of the lands so granted as a perpetual glebe, not exceeding 6 acres, as demesnes for the sexton of the parish, (and master of a free school) in such proportions as such archbishop, &c. shall judge proper: provided that no such sexton, &c. shall be thereby qualified to vote as a freeholder.

*Parish-clerks—
their salary in
Ireland.*

33 Geo. 2. c. 11.
s. 2. II.

25 Geo. 3. c. 58.
Ir.

*Sextons—their
demesnes in
Ireland.*

23 & 24 Geo. 3.
c. 49. s. 9 Ir.

CHAP. XII.

Of the Civil State.

§ 1.

*Creation of
peers.*

40 Geo. 3. c. 38.

Ir.

40 Geo. 3. c. 67.

Eng.

THE prerogative of the king, as the fountain of honour and nobility, in creating peers, is in some measure defined or restrained by the Act of Union (40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng.) by the 4th article of which it is provided, that it shall be lawful for the king to create peers of that part of the united kingdom called Ireland, and to make promotions in the peerage thereof, after the union; provided that no new creation shall take place, until three of the peerages of Ireland which shall have been existing at the time of the union shall have become extinct, and upon such extinction it shall be lawful for the king to create one peer of Ireland; and in like manner so often as three peerages of Ireland shall become extinct, it shall be lawful for the king to create one other peer of said part of the united kingdom. And if the peers of Ireland shall by extinction of peerages or otherwise be reduced to the number of one hundred, exclusive of such peers of Ireland as shall hold any peerage of Great Britain, subsisting at the time of the union, or of the united kingdom created since the union, by which such peers shall be entitled to an hereditary seat in the house of lords of the united kingdom, then it shall be lawful for the king to create one peer of Ireland, as often as any one of such one hundred peerages shall fail by extinction, or as often as any one peer of Ireland shall become entitled, by descent or creation, to an hereditary seat in the house of lords of the united kingdom; it being the intent of this article that at all times after the union, it shall be lawful for the king to keep up the peerage of Ireland to the number of one hundred, over and above the number of such of said peers as shall be entitled, by descent or creation, to an hereditary seat in the house of lords of the united kingdom. And this article declares, that

that if any peerage shall be in abeyance, it shall be deemed an existing peerage; and no peerage shall be deemed extinct, unless on default of claimants to the inheritance of such peerage for one year from the death of the person who shall be last possessed thereof; and if no claim shall be made to such peerage in such manner as may from time to time be prescribed by the house of lords of the united kingdom, before the expiration of said period of a year, then such peerage shall be deemed extinct; but any person may afterwards put in a claim to said peerage, and if such claim shall be allowed by the judgment of the house of lords of the united kingdom reported to the king, such peerage shall be considered as revived; and in case any new creation of a peerage of Ireland shall have taken place in the interval, in consequence of the supposed extinction of such peerage, then no new right of creation shall accrue to the king, in consequence of the next extinction of any peerage of Ireland. This article also provides, that the lords of parliament on the part of Ireland in the house of lords of the united kingdom, shall have the same privileges of parliament which shall belong to the lords on the part of Great Britain: and the lords spiritual and temporal on the part of Ireland shall have the same rights in respect of their sitting and voting upon the trial of peers, as those on the part of Great Britain. And all lords spiritual of Ireland shall have rank and precedence next after the lords spiritual of the same rank and degree of Great Britain, and shall enjoy all privileges as fully as the lords spiritual of Great Britain; the right of sitting in the house of lords and the privileges depending thereon, and particularly the right of sitting on the trial of peers, excepted: and the persons holding any temporal peerages of Ireland existing at the time of the union, shall have rank and precedence next after persons holding peerages of the like orders and degrees in Great Britain, subsisting at the union: and all peerages of Ireland created after the union, shall have rank and precedence with the peerages of the united kingdom so created, according to the dates of their creations. All peerages of Great Britain

*Irish peers may
serve as British
commoners.*

Britain or Ireland, subsisting or to be created, shall from the date of the union (1st January, 1801,) be considered as peerages of the united kingdom; and the peers of Ireland shall as peers of the united kingdom be sued and tried as peers except as aforesaid, and shall enjoy all privileges of peers as fully as the peers of Great Britain, the right of sitting in the house of lords, and the privileges depending thereon, and the right of sitting on the trial of peers only excepted. It is a provision by this article of the union, that any person holding any peerage of Ireland, *then* subsisting or to be created, shall not be disqualified from being elected to serve, or from serving or continuing to serve, if he shall so think fit, for any county, city, or borough of Great Britain, in the house of commons of the united kingdom, unless he shall have been previously elected to sit in the house of lords of the united kingdom; but so long as such peer shall continue to be a member of the house of commons, he shall not be entitled to the privilege of peerage, nor be capable of being elected to serve as a peer on the part of Ireland, or of voting at any such election of peers, and he shall be liable to be sued, indicted, proceeded against, and tried as a commoner, for any offence with which he may be charged:

*Precedence of
peers and officers
of England.
31 Hen. 8. c. 10.
Eng.*

s. 3.

s. 4.

The precedence of the peers and certain great officers of England is regulated by the 31 Hen. 8. c. 10. Eng. which enacts that no person, except the king's children, shall sit at any side of the cloth of estate in the parliament-chamber; and the king's vicegerent for the ecclesiastical jurisdiction shall sit on the right side of the parliament chamber, and upon the same form with the archbishop of Canterbury, and above the archbishop, and shall have voice in parliament as other lords: next (by s. 3.) shall sit the archbishop of Canterbury, and next on the same form the archbishop of York, and next on the same form the bishop of London, next the bishop of Durham, and next the bishop of Winchester, then all the other bishops shall sit on the same side after their antienties. By s. 4. the lord chancellor, lord treasurer, lord president of the council, lord privy seal, being of the

the degree of barons, or above, shall sit on the left side of the parliament-chamber, on the higher part of the form, above all dukes, except such as shall be the king's son, brother, uncle, or nephew, or the king's brother's or sister's son. By s. 5. the great chamberlain, the constable, the marshal, the lord admiral, the great master or lord steward, and the king's chamberlain, shall sit after the lord privy seal, and above all personages of the same degrees that they shall be. By s. 6. the king's chief secretary, being a baron, shall sit above all barons, or if he be a bishop, above all bishops. By s. 7. dukes, marquisses, earls, viscounts, and barons, not having any of the offices aforesaid, shall sit after their ancienty. By s. 8. if the lord chancellor, lord treasurer, lord president, lord privy seal, or chief secretary, be under the degree of a baron, they shall sit at the uppermost part of the sacks in the midst of the parliament chamber, either upon one form, or upon the uppermost sack in order as above rehearsed. By s. 9. in trials of treasons by peers, if any of the peers shall have any of the offices aforesaid, they shall sit according to their offices. And by s. 10. in all other assemblies and conferences of council, the lord chancellor, lord treasurer, lord president, lord privy seal, great chamberlain, constable, marshal, lord admiral, grand master or lord steward, the king's chamberlain, and the king's chief secretary, shall also sit in such order as above rehearsed. The 1 W. & M. st. 1. c. 21. Eng. which is an act for enabling lords commissioners for the great seal to execute the office of lord chancellor or lord keeper, declares (s 2.) that they shall take place after the peers of the realm, and speaker of the house of commons, unless any of them shall be a peer, and then according to his peerage.

s. 5.

s. 6.

s. 7.

s. 8.

s. 9.

s. 10.

1 W. & M. st. 1.
c. 21. s. 2. Eng.

The 6 Ann. c. 7. s. 8. Eng. (which has been in part stated *ante* p. 153—4.) provides, that the office of lord chancellor of Great Britain, lord high treasurer, lord president of the council, lord privy seal, lord high admiral, or of the great officers of the household, or any office, place, or employment, civil or military, within Great Britain, or Ireland, Wales, Berwick upon Tweed, Jersey, Guernsey, Alderney, and Sarke, or any of her majesty's plantations, shall not become void by the demise of the

*Officers civil
and military to
continue in office
for 6 months
after demise of
the crown, un-
less removed by
successor.*

6 Ann. c. 7.
s. 8. Eng.

*

crown;

s. 9.

*Great seal, &c.
to be used till al-
tered.*

crown; but the lord chancellor, &c. shall continue in their respective offices for 6 months after such demise, unless sooner removed by the next successor to the crown. And by s. 9. the great seal of Great Britain, the privy seal, privy signet, and other public seals in being at the demise of the crown, shall continue and be made use of as the seals of the successor, until such successor shall give order to the contrary.

CHAP. XIII.

Of the Military and Maritime State.

§ 1.

*Ancient military
system.*

IT is beside the purpose of this work, to deduce or detail the provisions of the ancient statutes of armour which were repealed in England by the 2 Jac. 1. c. 25. s. 46. Eng. and 21 Jac. 1. c. 28. s. 11. Eng. The 10 Hen. 7. c. 9. Ir. seems to have been framed upon the principle of the assize of arms, 27 Hen. 2. E. & I. and of the statute of Winchester 13 Edw. 1. st. 2. c. 6. E. & I. by appointing bows and other armour for the several classes of Irish subjects, in proportion to their estate and degrees, and in commissioning constables in their several parishes to array and exercise "all the commons of the land, to the intent that they might be able to do the king or his lieutenant service, for their own defence and surety." And by the 10 Hen. 7. c. 10. Ir. every man being of an age between 16 and 60 was required to be ready upon reasonable warning, in his best defensible array for war, to aid and defend the marches from the king's enemies and rebels. But the disuse of archery in Ireland is recited in the 10 Car. 1. st. 3. c. 22. Ir. which repealed the 12 Edw. 4. c. 2. Ir. intitled "an act for bringing bows into this realm from the realm of England by merchants and others." The service of this ancient militia in England and Ireland, was distinct from that of the knights and soldiers, who by their tenures were bound to attend the king in his wars; the 1 Edw. 3. st. 2. c. 5. E. & I. having provided that no man should

should be compelled to go out of his shire, but where necessity required, or upon the sudden coming of strange enemies into the country: and the 25 Edw. 3. st. 5. c. 8. E. & I. and the 4 Hen. 4. c. 13. E. & I. having further declared, that no man should be constrained to find men of arms, hoblers, or archers, (who by the 18 Edw. 3. st. 2. c. 7. E. & I. were to attend the king on his service out of England) other than those who held by such services, unless by common assent of the parliament. These military tenures which were abolished in England by the 12 Car. 2. c. 24. Eng. were in like manner converted into free and common socage tenures in Ireland, by the 14 & 15 Car. 2. c. 19. Ir.

II. The laws relating to the *militia* in England were reduced into one act, by the 26 Geo. 3. c. 107. Eng. But this statute was repealed by the 42 Geo. 3. c. 90. E. which by s. 2. empowers his majesty to constitute and appoint lieutenants for the several counties, ridings, and places, who shall have power to arm, array, and cause to be trained and exercised such persons and in such manner as hereby directed, once in every year; and these lieutenants are to appoint within the respective counties their deputy lieutenants, who are to be first presented to and approved by his majesty, and also a proper number of colonels, lieutenant-colonels, majors, and other officers, to train, discipline, and command the persons so armed and arrayed, according to the rules, orders, and directions herein mentioned: but the names and rank of such officers are to be certified to his majesty, who may within 14 days after such certificate signify his disapprobation of any of the persons so appointed; and the officers so appointed for the militia, shall rank with the officers of his majesty's regular forces, as youngest of their rank. And this act provides that the lieutenant of every county, &c. shall have the chief command of the militia within such county; and 20 deputy lieutenants at least, (if so many can be found qualified) shall be appointed within every county, &c.: and certain qualifications in respect of property are hereby prescribed, for the deputy lieutenants and officers respectively.

§ 2.

*Modern militia.*42 Geo. 3. c. 90.
s. 2. E.*Appointment of officers.*

s. 5. to 16.

A certain

Ballot for men.

s. 19.

s. 25.

s. 41.

Substitutes.

s. 42. & 136.

Volunteers.

s. 60.

*Ballot to supply
vacancies.*

s. 56.

s. 135.

s. 125-6.

s. 43.

*Exemptions
from service.*

A certain number of private men are required to be raised in the several counties, &c. the quotas of which are accordingly ascertained by s. 19.; and for this purpose the constables or other officers of the several parishes, &c. are by s. 25. pursuant to the orders of the chief constables or other officers of the several hundreds, to make returns to the deputy lieutenants, of the names of all the men usually and at the time dwelling within the respective parishes, &c. between the ages of 18 and 45 years; out of whom the number appointed by the deputy lieutenants at their meetings to serve for each parish, shall be chosen by ballot, and inrolled to serve for 5 years: but substitutes, who shall not have more than one child born in wedlock, may (by s. 41.) be produced, and if approved of inrolled in the place of those chosen by ballot: and volunteers, not being more than 35 years of age, who shall not have any child under the age of 14, may (by s. 42. & 136.) be also received with the consent of the inhabitants of any place, and a certain bounty given them, to be raised by rate upon such inhabitants. This act also provides (s. 60.) for balloting for men in the room of those whose terms of service shall expire; and by s. 56. to supply vacancies occasioned by death, discharge, or appointment to be serjeants, corporals, or drummers; or by s. 135. in cases of vacancies arising from desertion or absence: but by s. 125. & 126. certain bounties may be paid to those whose time of service shall be prolonged. By s. 43. peers of the realm, commissioned officers in the king's other forces, or in any castle or fort, officers on the half pay of the navy, army, or marines, non-commissioned officers or privates in the king's other forces, commissioned officers serving, or who have served, 4 years in the militia, resident members of either of the universities, clergymen, and teachers licensed within the county &c. and duly registered 12 months before the general meeting in October for the purposes of this act, and constables or other peace officers, articulated clerks, apprentices, seamen or seafaring men, and persons employed in his majesty's docks or dock-yards, or employed and mustered under the direction of the board of ordnance, and persons

free

free of the company of watermen of the river Thames, and poor men having more than one child born in wedlock, shall not be liable to serve personally, or provide a substitute to serve in the militia: and no person having served personally or by substitute, shall be obliged to serve again until by rotation it shall come to his turn; but no person who has served only as a substitute or volunteer, shall be exempted from serving again if he shall be chosen by ballot. This act (s. 50.) exempts quakers also from personal service, but substitutes are to be provided at their expense by the deputy lieutenants. By s. 45. all ballotted persons (except as above excepted) who shall refuse or neglect to serve, or provide a substitute, forfeit £10. and in default of payment are compellable to serve, and at the expiration of 5 years, shall be liable to serve again. And by s. 158. where the quota of any county, &c. shall not be raised within a limited time, £10. shall be paid for each man deficient, for which the justices in sessions shall make an assessment; or the solicitor of the treasury may by s. 169. compel the levying of the same.

s. 50.

s. 45.

Service enforced.

s. 158.

s. 169.

By s. 87. (as amended by the 43 Geo. 3. c. 19. G. B.) the militia shall be called out once in every year, for the purpose of being trained and exercised for 28 days, either the whole of the militia at the same time, or the respective parts thereof successively, not being less than 2 companies of 60 men, in such manner and proportion, and at such times and places, as shall be appointed, with the approbation of his majesty, by the lieutenant or deputy lieutenants, at a general meeting of the lieutenancy, or in default of such meeting by the lieutenant of the county, or by 3 deputy lieutenants (who by s. 3. may be authorized by his majesty, to act when the lieutenant shall be out of the kingdom, or where there shall be none.) And by s. 89. during such time as they shall be so assembled, the mutiny act and articles of war shall be in force, but so that no punishment shall extend to life or limb: * and by s. 99. every militia-man not appearing at the time and place of exercise, or absenting himself during that time, shall on conviction before a justice of the

Training and exercise of the militia.

s. 87.

43 Geo. 3. c. 19.
G. B.

s. 89.

s. 99.

* By s. 103. adjutants, non-commission officers, and drummers are at all times so subject to the mutiny act,

the peace, forfeit and pay £20., or be imprisoned in the house of correction, or common gaol, for 6 months, or till such penalty shall be paid.

Militia embodied in cases of invasion, &c.

s. 111.

By s. 111. in all cases of invasion, or upon imminent danger thereof, and in cases of rebellion or insurrection, it shall be lawful for the king, (the occasion being first communicated to parliament if then sitting, or otherwise declared in council and notified by proclamation,) to order all or any part of the militia to be embodied, and to put them under the command of general officers, and to direct said forces to be led by their respective officers into any part of Great Britain; and while they shall be so embodied they shall be subject to all the provisions of the mutiny act and articles of war: but by s. 112. they shall not on any account be carried out of Great Britain. This act further provides (s. 146.) that in cases of invasion or imminent danger thereof, and in case of rebellion, his majesty (the occasion being first communicated to parliament if then sitting, or otherwise declared in council and notified by proclamation,) may order an additional number of men to be raised in the several counties, not exceeding one-half of the number required by this act.

s. 112.

Not to leave the kingdom.

s. 146.

Supplementary militia called out.

s. 113. & 147.

But by s. 113. & 147. whenever the militia, or supplementary militia, shall be so called out, if the parliament shall be separated by such adjournment or prorogation as will not expire within 14 days, his majesty shall issue a proclamation for the meeting of parliament within 14 days.

Number of militia.

47 Geo. 3. st. 2. c. 71. s. 2. G.B.

s. 17.

s. 28.

s. 34.

s. 35.

The number of men to be raised in the several counties was increased by the 47 Geo. 3. st. 2. c. 71. s. 2. G. B. which for the more speedily completing the militia, imposed a forfeiture of £20. on each person chosen by ballot (not being a quaker) who should not serve or provide a substitute, to be paid to the next ballotted man: and by s. 28. every county, &c. for which the full number of men required by this act should not be inrolled, within the time hereby limited, was made subject to a fine of £60. for every man so deficient. And this act provided (s. 34.) that when the complement of men should be raised, the ballot should be again suspended till 1st Jan. 1810: but (by s. 35.) that it should be lawful for his majesty at any time within that

that period, to order that such ballot should take place for supplying any vacancies, which should arise after the militia should be reduced to the quota specified in the 42 Geo. 3. c. 90. E.

The laws relating to the militia in Ireland were amended *Militia of Ire-* and reduced into one act, by the 33 Geo. 3. c. 22. Ir. *land.* 33 Geo. 2. c. 22. which by s. 1. authorizes and requires the governors of s. 1. Ir. the several counties, to call together, arm, and array, and to cause to be trained and exercised, such number of men as are specified in this act: these governors are re- s. 2. & 8. quired to appoint such 20 deputy governors in each county, if so many shall be found qualified, as shall be first presented to and not disapproved of by the lord lieutenant; or in default of such appointment the lord lieutenant is empowered to appoint such deputy governors. By s. 3. the appointment of the lieutenant-colonel com- s. 3. & 5. mandant, or commanding officer of militia for every county, is vested in the king: and by s. 5. the power of *Appointment of* appointing lieutenant-colonels, majors, and other officers, *officers.* is given to the lieutenant-colonel-commandant. But by the 36 Geo. 3. c. 33. s. 3. Ir. the king may appoint colo- 36 Geo. 3. c. 33. nels to command each regiment; and by s. 4. order the s. 3. & 4. Ir. commanding officer to dismiss officers under them, and governors to displace deputies. By the 33 Geo. 3. c. 22. 33 Geo. 2. c. 22. s. 8. Ir. the lieutenant-colonel-commandant of the militia of every county, is to have the chief command of the militia therein. And as to cities and towns that are coun- s. 101. ties in themselves, the lord lieutenant may by s. 101. either order a separate militia to be arrayed and trained within their precincts, or make them parts of counties; and in the former case the chief magistrate shall be the governor; but his majesty shall appoint a commanding officer of such militia. By s. 9. & 101. a qualification s. 9. as to property, is prescribed for the deputy governors and several officers of militia respectively.

This act (s. 22.) requires returns to be made by the con- *Ballot for men* stables of parishes, to the high constables of baronies, of s. 22. the men between the age of 18 and 45 years, out of whom the number of men required for the several counties are to be chosen by ballot to serve for 4 years; and contains provisions also similar to those of the 42 Geo. 3. c. 90. E.

Exemptions. as to supplying vacancies, and in respect to the exemptions from serving; but this distinction is observable, that the exemption in respect to poverty is by this Irish act (s. 28.) as amended by the 35 Geo. 3. c. 8. s. 7. allowed to poor men not worth £10. or not paying £5. a year rent, who shall have more than 3 children born in wedlock, while one child constitutes an exemption by the English statute. The 35 Geo. 3. c. 8. s. 12. Ir. provides for receiving volunteers in ease of the respective counties: and in respect to substitutes, both acts merely require that they shall be approved of by the respective governors, or deputy governors.

Service enforced. As to enforcing the service of those who shall be chosen by ballot, the 33 Geo. 3. c. 22. s. 27. Ir. provides, that any person who shall refuse to serve, or procure a substitute, shall forfeit £10. and at the expiration of 4 years shall be liable to serve again, or provide a substitute; and in default of paying such fine, shall be compelled to serve. And by s. 103. in case of a deficiency in the number appointed to be raised, the judge of assize, (or the court of K. B. in the county of the city of Dublin) shall, on proof thereof by the oath of a governor, fine the county, &c. or district, £5. for every man so deficient, and repeat the said fine annually so long as said deficiency shall continue. By s. 71. the militia in every county concerning which proclamation shall be made, shall be trained and exercised once in every year, for 28 days together, at such time and place as shall be least inconvenient to the public, and to be appointed by the governors or deputy governors; and during such time the mutiny act shall be in force; but so that no punishment shall extend to life or limb.* And by s. 78. every militia-man (not incapacitated) who shall not appear at the time and place appointed for annual exercise, or who shall absent himself during the time, shall forfeit £10.; and in default of payment shall, upon conviction before a justice of peace, be imprisoned in the common gaol for 6 months, or until he shall have paid the penalty. This act also provides (s. 91.) that in case of invasion or imminent

* By s. 84. adjutan's, non-commissioned officers, and drummers are at all times so subject to the mutiny act.

minent danger thereof, (to be signified by proclamation from the lord lieutenant and privy council,) or in cases of rebellion or insurrection, the lord lieutenant may order the governors and lieutenant-colonels-commandant or commanding officers of militia, to embody the whole or any part thereof; and may also put said forces under the command of general officers, and direct them to be led into any part of Ireland; and during such time the officers and privates shall be subject to all the provisions of the mutiny act: but by s. 92. they shall not be ordered out of Ireland.

s. 92.

Not to leave Ireland.

The number of the militia which was ascertained by this act (s. 15.) for the respective counties, was increased by the 35 Geo. 3. c. 8. s. 1. Ir. which authorized the justices at sessions to issue their warrant for levying £10. for every man that should be deficient. The 44 Geo. 3. c. 33. I. also provided for the augmentation of the militia, by allowing a certain bounty to volunteers. And their number has been still further increased by the 47 Geo. 3. st. 2. c. 56. I. which authorized the lord lieutenant and council of Ireland, to order a certain proportion of additional or supernumerary men to be raised, either by ballot, or by receiving volunteers: and this act enabled the inhabitants of the several parishes to make assessments for providing substitutes, or volunteers, and provided, that every county, &c. in which the number of men required should not be raised, should be charged with the payment of £30. for every man deficient; but the regular or permanent quota or establishment for the Irish militia, is by this act declared to be 21,660 men, the number appointed to be raised by the 35 Geo. 3. c. 8.

Number of Irish militia.

35 Geo. 3. c. 8. s. 1. Ir.

44 Geo. 3. c. 33. I.

47 Geo. 3. st. 2. c. 56. I.

§ 3.

Local militia.

48 Geo. 3. c. 111. E.

s. 2.

Their number.

III. The 48 Geo. 3. c. 111. E. provides, that in aid of his majesty's regular militia forces, for the defence of the realm in case of invasion, a permanent *local militia* shall be ballotted and inrolled in England, at such period, and in such counties, or parts of counties, and in such proportions as his majesty shall by warrant under his sign manual direct, under the restrictions and regulations herein mentioned. This act (s. 2.) defines the proportion which this local militia (including the effective yeomanry and volunteers) shall bear to the quota of militia established by the

- s. 8. the 42 Geo. 3. c. 90: and by s. 8. provides, that the men shall be ballotted out of persons between the age of 18 and 30; and that no ballotted person shall be allowed to find a substitute, or be entitled to any bounty: but by
- How raised.* s. 24. & 26. a certain bounty is to be allowed to those who shall voluntarily inrol themselves, being fit for military service and between the age of 18 & 40. By s. 11.
- Persons exempted.* s. 11. persons unable to serve from illness or bodily infirmity shall be excused. And by s. 23. quakers and united brethren shall not be inrolled, but shall be liable to be fined as other persons. By s. 12. licensed teachers in holy orders, medical men, and persons employed under the board of ordnance, are exempted from this service.
- s. 12. And by s. 13. persons who have served in the regular militia, or additional force raised under the 43 Geo. 3. c. 82. are exempted for 4 years after the expiration of their periods of service, or after having paid their fines for not serving, or for 6 years from the period at which their substitutes shall have been inrolled. By s. 17. any ballotted person who shall not appear to be inrolled and to take the oath hereby prescribed, shall pay a fine of £30.; or if his clear annual income shall not amount to £200., then the sum of £20.; and if not amounting to £100., then the fine shall be but £10.; and every person paying such fines, shall be liable to be ballotted for in the next year but one, and so in each 2d succeeding year: and by
- Service enforced.* s. 17. s. 18. any person imprisoned for non-payment of any fine, shall be liable to serve for 4 years after being released from such imprisonment. By s. 47. every county, &c. shall be liable to a fine of £15. for every man remaining deficient at the period hereby limited for their inrolment,
- s. 18. And by s. 46. all vacancies in the local militia shall be filled up, notwithstanding the suspension of the ballot for the regular militia. By s. 32. persons serving in the local militia shall be entitled to an exemption from service in the regular militia, or from being trained and exercised under the 46 Geo. 3. c. 90. and shall not be liable to be ballotted to serve in the regular militia, for 2 years after they shall have served 4 years in the local militia, or until by rotation it shall come to their turn. By s. 34. the
- Encouragement to service.* s. 32. officers
- s. 34.

officers of the militia raised under this act shall, with certain exceptions, rank with the officers of the other militia forces, as the youngest of their respective ranks: and by s. 37. his majesty may put the local militia under the command of general officers. The period of their service is by s. 16. limited to 4 years: and by s. 38. his majesty may order them to be called out within their respective counties in each year, to be trained and exercised at such times and in such manner and proportions as he shall think fit, and the periods and places for such exercise shall be appointed by the lieutenants or deputy lieutenants of the several counties; but the men shall not be exercised for more than 28 days in a year, exclusive of days of arriving at and departure from the place of exercise, and they shall not be marched for such exercise out of the county, unless where united with the local militia of an adjacent county, for the purpose of forming a regiment or battalion. But by s. 40. in cases of invasion, or of the appearance of an enemy in force upon the coast of any part of the united kingdom, his majesty may, by order in council or proclamation, draw out such local militia, and direct them to be marched to any part of Great Britain, and keep them so embodied until 6 weeks after the enemy shall be repelled from the coast, or after any rebellion or insurrection, arising or existing at the time of such invasion, shall have been suppressed. And by s. 41. the lord lieutenant, or vice lieutenant, or sheriff of any county, or in their absence 2 justices of peace and 1 deputy lieutenant, may call out the local militia, or any part, for the suppression of any riots or tumults in such county, or in any adjoining county; and when so called out they shall be deemed to be assembled for training and exercise, but they shall not be kept upon such service for more than 14 days in any year; and if such service shall arise after they shall have been exercised for 28 days in any year, the days of such service shall be deemed part of the days of training and exercising of the succeeding year. And it is provided, that when the local militia shall be so called out, the same shall be notified to one of the principal secretaries of

Rank of officers

s. 37.

s. 16. & 38.

Nature of service

s. 40.

Embodied in cases of invasion, &c.

s. 41.

To be called out for suppression of riots.

s. 42. state, for his majesty's approbation. By s. 42. whenever the local militia shall be assembled in time of war, for the purpose of training and exercising, or for the suppression of riots or tumults, they shall be subject to all the provisions of the mutiny act and articles of war. And by s. 6. the powers and provisions of the several militia acts, so far as they are applicable, are to be extended to this act, for the purposes of its execution.

§ 4. IV. The 44 Geo. 3. c. 54. G. B. has consolidated and amended the provisions of the several acts relating to corps of yeomanry and volunteers in Great Britain, and enacts (s. 3.) that it shall be lawful for his majesty to continue the services of any corps of yeomanry or volunteers then formed, or to accept the services of any corps to be formed after the passing of this act, under officers having commissions from his majesty or any lieutenant of a county, or other person authorized by his majesty, upon such terms and conditions as to his majesty shall seem fit; and to disband or discontinue the services of any such corps. And by s. 26. all such officers shall rank with the officers of his majesty's regular and militia forces, as youngest of their respective ranks.* By s. 4. every person who shall be duly returned under this act as an effective member of any corps of yeomanry or volunteers in Great Britain, shall be exempt from serving personally, or providing a substitute in the militia of Great Britain or other additional force; but such exemption shall not extend to any corps, in the offer or acceptance of the service of which, it shall have been specified, that such exemption would not be claimed or allowed; or to any greater number of persons than the established number of such corps: and by s. 5. no person shall be deemed an effective member who shall not have duly attended properly armed and accoutred, and mounted if cavalry, at the muster or exercise of the corps, if cavalry 4 days, if infantry 8 days at the least, in the course of the 4 months next preceding each return made under this act; unless he shall have been absent with leave,

* But by the 46 Geo. 3. c. 125. no such officer shall rank above a field officer of the regulars or of the militia.

leave, or shall have been prevented by actual sickness, such sickness to be certified by some medical practitioner, nor unless such person shall be returned by his commanding officer, in manner directed by this act, as an effective member, and as having taken the oath of allegiance. And by s. 8. if any effective member shall have

s. 8.

attended at the usual muster and exercise of the corps, the full number of 12 days if cavalry, or 24 days if infantry, within any 4 successive months commencing from any day appointed by this act for making returns, or within any 2 successive periods of 4 months commencing as aforesaid, he shall be entitled to exemption. By s. 17.

s. 17.

persons inrolled in the yeomanry or volunteers, shall not be exempt from being ballotted to serve in the militia or additional force; and every person chosen by ballot, shall, if he quit such corps, or be discharged therefrom by his commanding officer for non-attendance or misconduct, during the war or until 6 months after, &c. be immediately liable to serve for the full period of service for which he shall have been chosen by ballot: but by s. 18.

s. 18.

no member of any corps of yeomanry or volunteers, who shall have been chosen by ballot to serve in the militia or other additional force, if he shall continue to serve as an effective member of such corps during the war and until 6 months after, &c. shall be liable to serve or find a substitute by reason of any such ballot; but such person shall however from thenceforth be liable to be chosen by ballot, and to serve, as if he had not before been chosen. It is

48 Geo. 3. c. 111.

s. 28 E.

a provision of the 48 Geo. 3. c. 111. s. 28. E. that the members of any corps of volunteers may transfer themselves, with the approbation of his majesty, to the local militia.

Volunteers may transfer themselves to local militia.

By s. 21. adjutants, serjeant-majors, drill-serjeants, and serjeants, and all trumpeters, buglemen, drummers, and farriers, receiving constant pay, shall be liable to the mutiny act and articles of war, so that no punishment extend to life or limb. And by s. 22. in cases of invasion,

When liable to mutiny act.

44 Geo. 3. c. 54.

s. 21. G. B.

or appearance of the enemy on any part of the coast of Great Britain, or of rebellion or insurrection then arising or existing, all corps of yeomanry, &c. shall, when they shall be summoned by the lieutenants of the counties

s. 22.

or their deputy lieutenants, or upon the making of any general signals of alarm, forthwith assemble within their respective districts, and march according to the terms and conditions of their respective service, or otherwise be deemed deserters, and punished as such, if not incapacitated, nor serving in any other corps; and all such corps shall, from the time of such summons or signal, until such invasion shall be repelled, or such rebellion, &c. suppressed, (to be signified by his majesty's proclamation) be subject to all the provisions of the mutiny act and articles of war. And by s. 23. when any such corps shall, with the approbation of his majesty signified through his principal secretary of state, voluntarily assemble or march to do military duty, upon any appearance of invasion, or for the purpose of improving themselves in military exercise, (except in the case specified, as to corps of yeomanry cavalry by s. 46.) or shall voluntarily march in pursuance of any order from the lieutenant or sheriff of the county, for the suppression of riots or tumults, they shall be subject to all the provisions of the mutiny act and articles of war. By s. 30. any person inrolled in any such corps may quit such corps, except when summoned or assembled upon actual service, or voluntarily assembled for the purpose of doing military duty.

Yeomanry of Ireland.

37 Geo. 3. c. 2.

Ir.

42 Geo. 3. c. 68.

I.

s. 9.

Encouragement to serve.

The yeomanry of Ireland were first established by authority of the 37 Geo. 3. c. 2. Ir. which was to have continuance to the end of the *then* war: and the 42 Geo. 3. c. 68. I. is an act to enable his majesty to accept and continue the services of such troops or companies of yeomanry in Ireland as have voluntarily associated themselves under the 37 Geo. 3., or as shall hereafter voluntarily associate and inrol themselves in manner herein mentioned. By this act (s. 9.) no person who shall be inrolled or continued in any such troop or company, shall, during the time he is serving in such corps, be liable to serve personally, or to provide a substitute to serve in the militia, provided he shall produce a certificate signed by his commanding officer, that he has for 3 months immediately preceding the day on which he shall have been ballotted to serve in the militia, punctually attended at all such times and places as may have been appointed for the exercise

ercise of such troop, &c. unless prevented by sickness, which shall be specified in such certificate and verified by oath. And by s. 3. neither the inrolment in any such corps, nor the receiving such pay or allowances as hereby provided, shall subject any person to military discipline or the provisions of any mutiny act. But by the 43 Geo. 3. c. 121. I. (which amends this act) serjeants, trumpeters or buglemen, and drummers, shall be subject to the mutiny act and articles of war, so that no punishment shall extend to life or limb. And by s. 10. in all cases of invasion, rebellion, insurrection, or apprehension thereof, in Ireland, his majesty or the lord lieutenant may order all corps to assemble in their respective districts, and such corps shall thereupon be liable to march according to their respective terms of service; and all officers and men in such corps shall from such time, and until the enemy be defeated and expelled, and all rebellion, &c. shall cease, be subject to the mutiny act and articles of war: but by s. 8. they shall be tried only by courts martial composed of yeomanry officers. By s. 11. they shall on so assembling be put under such general officers as his majesty shall appoint. And by s. 12. all officers of such corps shall rank with the officers of the regular and militia forces as youngest of their respective ranks.

V. In order more effectually to provide for the defence of the realm, the 46 Geo. 3. c. 90. s. 4. E. enacts, that his majesty may on any returns made or to be made of the numbers of persons liable to serve in the militia, (under any act now in force or to be passed in this session) direct his privy council to take such returns into consideration, and to apportion any number of men not exceeding 200,000 amongst the several counties, and direct such number to be divided at the general and subdivision meetings of the lieutenancy, amongst the hundreds and parishes of such counties, in like manner as with respect to the militia. By s. 9. his majesty may direct any numbers not exceeding said 200,000, to be ballotted and inrolled, and also direct any proportion thereof to be taken either by ballot, or according to the order in which they shall have been ballotted, or according to any class with respect to age, marriage, or number of children, and

s. 3.

43 Geo. 3. c. 121.

s. 8. 1.

*Serjeants, &c.
liable to mutiny
act, &c.*

s. 10.

*In cases of in-
vasion, officers
and men subject
to mutiny act.*

s. 11.

s. 12.

Rank of officers.

§ 5.

Training act.

46 Geo. 3. c. 90.

s. 4. E.

*Number to be
trained.*

s. 9.

- s. 25. and trained and exercised under this act: and by s. 25. the lieutenants of counties shall thereupon order the deputy lieutenants to fix the times and places of exercise, subject nevertheless to any orders of the secretary of state in that behalf; but Sunday shall not be a day of exercise unless specially ordered by his majesty. By s. 26. no person shall be required to attend any greater number of days' training and exercising than 24 days in the year; or to go for the purpose to any greater distance from his usual place of residence than 5 miles: and by s. 27. one of the constables or other peace officers in every parish, shall attend at the times and places appointed for training and exercise. By s. 33 his majesty may appoint general and other officers and non-commissioned officers for the commanding, training, and exercising the persons inrolled. By s. 34. his majesty, on apprehension of immediate invasion, may order all the persons inrolled to be embodied for any time not exceeding 21 days, but not to be marched out of their respective counties, unless in case of actual invasion, or of the appearance of an enemy in force upon the coast; and all persons so inrolled shall be under the command of the lieutenants and deputy lieutenants of the counties, or officers appointed by them, until his majesty shall appoint other officers. By s. 35. in all such cases of actual invasion of any part of the united kingdom, or of the appearance of an enemy in force upon the coast, his majesty may by order in council or proclamation, embody all or any part or class of the men who shall have been ballotted for the then year or the preceding year, and attach such men to the regulars or to the militia, or form them into new regiments or corps, or otherwise employ them in military service as occasion shall require; and direct them to be led into any part of Great Britain for the repelling such invasion, or suppressing any rebellion or insurrection existing at the time: and such men shall, until disembodied by his majesty's order, be subject to all the provisions of the mutiny act and articles of war. But by s. 37. no person so drawn out shall be compellable to serve out of Great Britain, or be kept embodied for more than one month after

after the enemy shall have been repelled, or the rebellion &c. suppressed. And by s. 41. whenever his majesty shall order the men inrolled to be embodied, the occasion of such order shall be communicated to parliament, if sitting, or otherwise the occasion shall be declared in council, and notified by proclamation. By s. 50. every county, hundred, and parish for which men shall not have been ballotted and inrolled according to the provisions of this act, shall be subject to a fine of £5. for every man remaining deficient: but by s. 10. when such ballot shall be directed, if any persons between the age of 18 and 30 and fit for service shall voluntarily inrol themselves in any parish, and shall amount to the number to be inrolled under such apportionment as aforesaid, then no ballot shall take place. And by s. 16. if any volunteer or person ballotted and inrolled under this act, shall refuse or neglect to appear within such period and at such place as shall be appointed by the deputy lieutenants, and sign the regulations in the schedule to this act annexed, (specifying the fines for non-attendance and misconduct, and containing other regulations relating to persons inrolled,) such person shall forfeit £10.; or if his annual income shall not amount to £100. then the sum of £5.; and such person shall be liable to be ballotted in the succeeding year, and pay such fine; and so in each succeeding year. But by s. 15. no person who shall have been inrolled under this act, and shall have been actually trained and exercised, shall be liable to be ballotted again for the 2 succeeding years. By s. 6. licensed teachers of separate congregations in holy orders, not exercising any other occupation except that of a school-master, and medical men being house-keepers, are exempted from being trained and exercised under this act: and by s. 20. quakers and united brethren shall not be inrolled, but shall pay such fines, not exceeding £7. nor less than 20s., for the year in which they shall be ballotted, as to the deputy lieutenants or justices shall appear proper, according to the situation in life, and property of such person. By s. 18. any ballotted person going into a volunteer corps, and producing a certificate thereof as hereby required, shall be struck out of the inrolment, and

s. 41.

s. 50.

Service enforced.

s. 16.

s. 15.

s. 6.

Exemptions from service.

s. 20.

s. 18.

he

be exempt from ballot: but by s. 19. every person claiming exemption from ballot as a member of any yeomanry or volunteer corps, shall in the year succeeding produce a certificate from the commanding officer of such corps, bearing date between the 10th September and 1st October, of his being at that time an effective member of such corps, or be liable to pay a fine of £15. And by s. 2. his majesty's lieutenants and deputy lieutenants appointed under the 42 Geo. 3. c. 90. E. and all justices of peace, constables, and other officers, shall do all acts necessary to put this act in execution, and shall have all the powers for the purpose that are given by the 42 Geo. 3. c. 90.

Training act in respect to Ireland.
43 Geo. 3. c. 55. This act does not extend to Ireland, but the 43 Geo. 3. c. 55. s. 1. requires the governors of counties in Ireland and their deputies, in obedience to the orders of the lord lieutenant, to procure returns of men of 15 years of age and under 60, distinguishing which are incapable of service, and which are in volunteer corps or yeomanry, and which of them are willing to be armed, arrayed, trained, and exercised for the defence of the united kingdom, [or to engage in works of labour for the public service, and upon what terms, whether gratuitously or for hire,] distinguishing all aliens and quakers, with such other particulars as the lord lieutenant shall require. And by s. 2. the lord lieutenant and council may require the governors and deputy governors to appoint officers for arraying, training, exercising, and commanding such men, under such regulations and restrictions as the lord lieutenant shall think fit; such officers to be first approved of by the lord lieutenant: and if within the time specified in the orders for the purpose, a sufficient number of such officers shall not be appointed, the lord lieutenant may appoint as many as shall be necessary. By s. 4. the governors and deputy governors shall have the like powers for putting this act in execution, as they have by any law now in force respecting the militia. This act contains several provisions for the defence and security of the realm during the war, and for indemnifying persons who may suffer in their property by such measures as may be necessary for the purpose. And this act also extended to Great Britain, but was amended by the 43 Geo. 3. c. 96.

G. B. and 43 Geo. 3. c. 120. G. B. which were repealed by the 46 Geo. 3. c. 90. *supra*.

VI. With respect to the king's *regular forces*, it is one § 6.
of the articles of the Bill of Rights, 1 W. & M. st. 2. *Regular forces.*
c. 2. Eng. that the raising or keeping a standing army 1 W. & M. st. 2.
within the kingdom in time of peace, unless it be with c. 2. Eng.
consent of parliament, is against law. The 48 Geo. 3. 48 Geo. 3. c. 15.
c. 15. U. K. which is the last annual act "for punishing U. K.
mutiny and desertion, and for the better payment of the
army and their quarters," recites this clause, but that it is
judged necessary by his majesty and the parliament, that
a body of forces should be continued for the safety of the
united kingdom, the defence of the possessions of his
majesty's crown, and the preservation of the balance of
power in Europe; and accordingly declares, that the
whole number of such forces shall consist of 124,063 ef-
fective men. The peace establishment of regular forces
in Ireland, which was fixed at 12,000 men by the 10
W. 3. c. 1. Eng. was increased to 15,235 men by the 8
Geo. 3. c. 13. Eng. and 9 Geo. 3. c. 2. Ir.: and the in- 10 W. 3. c. 1.
crease to the Irish establishment occasioned by the war, Eng.
was at the time of the union, 33,839 men, the 40 Geo. 3. 8 Geo. 3. c. 13.
c. 4. Ir. having provided for the subsistence and pay of Eng.
that additional number, making a total of 49,073 effective 9 Geo. 3. c. 2. Ir.
men. But the army of the united kingdom of Great
Britain and Ireland is now one, controuled by the same
mutiny act, and subsisted at the expense of the respec-
tive countries, according to the rates of proportionate
contribution established by the act of union (40 Geo. 3.
c. 38. Ir. and 40 Geo. 3. c. 67. Eng.) It is foreign from
the purpose of this Digest to detail the several provisions
of the annual mutiny act, some of them will however
occur in other parts of this work; but some clauses
appear to be proper for this place. By the 48 Geo. 3. 48 Geo. 3. c. 15.
c. 15. s. 30. U. K. it shall be lawful for his majesty to s. 30. U. K.
make articles of war for the better government of his *Articles of war.*
forces; which articles shall be judicially taken notice of
by all judges, and in all courts whatsoever. And by
s. 31. & 11. for bringing offenders against such articles s. 31. & 11.
to justice, it shall be lawful for his majesty to constitute *Courts martial.*
courts

courts martial, or to grant commissions under his sign manual for the holding of general courts martial; or empowering the chief governor of Ireland, or governor of Gibraltar, or the other dominions of the king, or the commander of the forces, or the general, or other officers not below the degree of field-officers, to convene general courts martial, with power to try and determine any crimes or offences by such articles of war, and to inflict penalties by sentence of the same, within Great Britain and Ireland, in Jersey, Guernsey, Alderney, Sark, or Man, and the islands thereto belonging, and in Gibraltar or any of his dominions, beyond the seas or elsewhere. But by s. 32. no person shall, by such articles of war, be subjected to any punishment extending to life or limb, within Great Britain and Ireland, Jersey, Guernsey, Alderney, Sark, or Man, or any of the isles thereto belonging for any crime which is not expressed to be so punishable by this act; nor for such crimes as are expressed to be so punishable, in any other manner than according to the provisions of this act. By s. 13. this act shall not exempt any officer or soldier from being proceeded against by the ordinary course of law. And by s. 14. if any officer, non-commission officer, or soldier shall be accused of any capital crime, or of any offence against the person, estate or property of any of his majesty's subjects, which is punishable by the laws of the land, the commanding officer of the regiment or party shall use his best endeavours to deliver over such person to the civil magistrate, and shall be aiding to the officers of justice in apprehending such offender; and in case such commanding officer shall be convicted of neglect or refusal so to do in any of his majesty's courts at Westminster or in Scotland or Dublin, he shall be *ipso facto* cashiered, and disabled to hold any office civil or military within the united kingdom; and a certificate of such conviction shall be transmitted to the judge advocate in London, if the conviction be in Great Britain, or to the judge advocate in Dublin, if such conviction shall be in Ireland. By s. 15. no person being acquitted or convicted of any crime or offence by the civil magistrate, shall be punished by a court martial for the same, otherwise than

s. 32.

s. 13. & 14.

Officers, &c. in
certain cases pro-
ceeded against
by the ordinary
course of law.

s. 15.

than by cashiering. This mutiny act (s. 41.) also recites the Petition of Right 3 Car. 1. Eng. by which it is enacted and declared, that the people of the land are not by the laws to be burthened with the sojourning of soldiers against their wills; and further recites a clause of the 31 Car. 2. Eng. which declared and enacted that no officer civil or military, nor other person should presume to place, quarter, or billet any soldier upon any subject or inhabitant of the realm, without his consent; but for as much as during the continuance of this act, there may be occasion of marching and quartering regiments, &c. in several parts of the united kingdom, it therefore provides for billeting the officers and soldiers in his majesty's service, in England, &c. on inns, livery-stables, ale-houses, victualling houses, and the houses of sellers of wine by retail, (except freemen of the company of vintners of London,) and on the houses of persons selling brandy, strong water, cider, or metheglin by retail, but not on other shopkeepers, nor on distillers, who do not permit tippling, nor on any private houses; such billeting to be under the direction of constables and chief magistrates, and subject to the controul of the justices of peace of the division, city, or liberty. And by s. 68. the quartering of soldiers in Ireland shall be as provided by the laws in force at the time of the union. The annual mutiny acts in Ireland (of which the 21 & 22 Geo. 3. c. 43. Ir. was the first) contained a recital of the 6 Ann. c. 14. Ir. which declared and enacted that no officer, soldier, or trooper, nor the servant of any officer, nor any attendant on the train of artillery, nor any yeoman of the guard of battle-axes, or officer commanding them, or servant of such officer, should be allowed any quarters save only while they should be on their march, or while remaining in some sea-port town in order to be transported, or during such time as there should be any commotion in the kingdom. But the 40 Geo. 3. c. 7. Ir. and the prior mutiny acts, authorized the billeting his majesty's troops in inns, livery-stables, ale-houses, and on sellers of wine by retail to be drunk in their own houses or places, and on persons selling brandy, strong waters, cider or metheglin by retail; and if not sufficient room therein, then in such manner as heretofore customary.

s. 41.

Billeting restrained and regulated.

s. 68.

Billeting in Ireland.

Clause for relief
of persons has-
tily enlisting
themselves.

s. 72.

customary. One other branch of the mutiny act may be here also adverted to, which allows a *locus penitentie* to those who shall hastily enlist themselves, and thereby restrains any improper attempts to trepan men into the service. By the 48 Geo. 3. c. 15. s. 72. U. K. when any person shall be enlisted as a soldier, he shall within 4 days, but not sooner than 24 hours, after such enlisting, be carried before some justice of peace of any county, &c. or chief magistrate of any city or town corporate, residing or being next to, or in the vicinity of the place where such person shall have been enlisted, and not being an officer in the army, before whom he shall be at liberty to declare his dissent to such enlisting; and upon such declaration and returning the enlisting money, and paying 20s. for the charges expended upon him, such person shall be forthwith discharged in the presence of such justice, &c.; but if such person shall refuse or neglect within 24 hours to return and pay such money, he shall be deemed to be enlisted, as if he had given his assent thereto. And by s. 73. if any person shall receive the enlisting money from any person employed in the recruiting service, (knowing it to be such) and shall abscond, or refuse to go before such justice, &c. in order to declare his assent or dissent, he shall be taken to be enlisted, and proceeded against, as if he had taken the oaths hereby directed to be taken.

s. 73.

§ 7.

Manning of the
navy.

VII. As to the *maritime state* the 5 Ric. 2. st. 1. c. 3. E. & I. 6 Ric. 2. st. 1. c. 8. E. & I. and 14 Ric. 2. c. 6. E. & I. which prohibited the king's subjects from shipping any merchandise out of, or into, or within the realm, but only in ships of the king's ligeance, (if such should be found sufficient) on pain of forfeiture, were passed, as the first of these statutes declared, in order to increase the navy of England which was then greatly diminished: And the 4 Hen. 7. c. 10. E. & I. which prohibited the wines of Guienne or Gascoigne, and Tholouse woad to be brought into England but in ships whereof the king or his subjects were owners, and the master and mariners for the most part natives, was prefaced with the preamble "that great diminishing and decay hath been now of late time of the navy of this realm of England, and idleness of the mariners

riners within the same, by the which this noble realm within short process of time, without reformation be had therein, shall not be of ability nor of strength and power to defend itself:" and these politic provisions were confirmed by the 23 Hen. 8. c. 7. Eng. and 32 Hen. 8. c. 14. Eng. But the principal navigation act is the 12 Car. 2. c. 18. Eng.* which "for the increase of shipping and encouragement of the navigation of this nation, wherein under the good providence and protection of God, the wealth, safety, and strength of this kingdom is so much concerned," enacts (s. 1.) that no goods shall be imported into, or exported out of any plantations or territories which belong to the king in Asia, Africa, or America, but in ships belonging to the people of England, &c. or Ireland, or which are of the built of and belonging to any of said plantations, &c. as the proprietors thereof, and whereof the master, and three-fourths of the mariners at least, are English; under the penalty of the forfeiture of all the goods which shall be imported into, or exported out of any of the aforesaid places in any other ship, as also of the ship with all its tackle, ammunition, and apparel; 1-3d thereof to the king; 1-3d to the governor of such plantation, &c. in case the ship or goods be there seized, or otherwise that third part also to the king; and the other 3d to him or them who shall seize, inform and sue for the same in any court of record by action, &c.; and all commanders at sea are required to seize and bring in as prize all such ships as shall have offended contrary hereunto, and deliver them to the court of admiralty, there to be proceeded against; and in case of condemnation one moiety of such forfeitures shall be to the use of such commanders, and their companies, to be divided according to the rules of the sea in case of ships taken prize; and the other moiety to the king. By s. 3. no goods of the growth, production, or manufacture of Asia, Africa, or America, shall be imported into England, &c. or Ireland, Guernsey, or Jersey, in any other ship but in such as shall belong to the people of England, &c. or Ireland, or of any of the king's plantations or territories, and whereof the master and three-fourths of the mariners are

12 Car. 2. c. 18.
s. 1. Eng.

Navigation act.

*Goods imported
into or exported
from foreign set-
tlements, in Bri-
tish shipping.*

s. 3.

*Goods imported
into England,
&c. in British
shipping.*

*Various statutes have dispensed with this act as to particular goods, and places.

are English, upon pain of forfeiting such goods, and the vessel with its guns, &c. one moiety to the king, and the other to him or them that shall seize, inform or sue for the same by action, &c. in any court of record. And by s. 4. (as explained by the 19 Geo. 3. c. 48. Eng.) no goods that are of foreign growth, &c. and are to be brought into England, &c. Ireland, Guernsey, or Jersey, in English built shipping, or other shipping belonging to said places, and navigated by English mariners, shall be brought from any other places but those of the growth, &c. or from those ports where the said goods can only, or are, or usually have been first shipped for transportation, nor unless manufactured in the country of which they are the growth, under such penalty as in s. 3. By s. 6. it shall not be lawful to load in any ships, whereof any strangers, (unless such as be denizens or naturalized) be owners, part owners, or master, and whereof three-fourths of the mariners be not English, any goods from one port or creek of England, &c. Ireland, Guernsey, or Jersey, to another port, &c. of the same under such penalty as in s. 3. *supra*. And by s. 7. where any privilege is given in the book of rates to English built shipping (that is shipping built in some of the king's dominions) it is to be understood that three-fourths of the mariners shall be also English; and where it is required that three-fourths of the mariners shall be English, the true meaning is, that they shall be such during the whole voyage, unless in case of sickness, death, or being taken prisoners in the voyage, to be proved by the oath of the master or other chief officer of such ships. This act also increased the aliens duty upon certain articles, which has been done away as already observed;* but an additional duty is still payable upon several articles when imported in foreign shipping, by the several acts which regulate the duties of customs payable in England and Ireland.

**Vide page 194*

The 13 Geo. 2. c. 3. s. 1. & 4. Eng. provides, that when it is necessary to declare war against any foreign power, it shall be lawful for the king (notwithstanding the 12 Car 2. c. 18.) to publish a proclamation, to permit all trading vessels, and privateers, to be manned with foreign seamen during the war, so as the number of such foreign seamen

s. 4.

Goods of other
countries import-
ed directly.

s. 6.

Goods carried
coastwise in
British shipping

s. 7.

English ship-
ping and Eng-
lish mariners
defined.

13 Geo. 2. c. 3.
s. 1. & 4. Eng.

Exemption in
time of war.

seamen

seamen do not exceed three-fourths of the mariners employed to navigate such ships, and that one-fourth be natives or naturalized subjects of Great Britain, (sudden death, hazard of war and the seas excepted;) but this act shall be in force during such war and no longer, except as to such ships which, being so navigated, shall be on their voyage before the determination of such war, which shall be allowed to return home. By the 20 Geo. 2. c. 45. 20 Geo. 2. c. 45. s. 9. Eng. Prize-ships. Eng. all prize ships legally condemned shall be considered as British built ships. By the 34 Geo. 3. c. 68. s. 6. Eng. 34 Geo. 3. c. 68. s. 6. Eng. Who shall be British masters or mariners. no person shall be master of a British ship, or be deemed a British seaman, except natives, or persons naturalized or made denizens, or the subjects of some newly acquired country, or foreign seamen serving 3 years in the navy in time of war. The 26 Geo. 3. c. 60. Eng. 26 Geo. 3. c. 60. s. 3. Eng. Ships registered. recites, that it is proper that the advantages given to ships owned and navigated by his majesty's subjects should be confined to ships wholly built and fitted out in his majesty's dominions, and enacts (s. 3.) that every ship or vessel having a deck, or being of the burthen of 15 tons or upwards, belonging to any of his majesty's subjects in Great Britain, Guernsey, Jersey, or the Isle of Man, or any of the colonies, shall be registered in the manner hereby prescribed; and that the person claiming property therein shall obtain a certificate of such registry from the collector and comptroller of the customs in Great Britain and the Isle of Man, or from the governor, lieutenant-governor, or commander in chief, and principal officer of the customs in Guernsey, Jersey, or in any of the colonies. And by s. 32. no ship shall be permitted to clear out, or proceed to sea for any purpose whatever, as a British ship or vessel, or be entitled to the privileges of s. 32. Certificate of registry. a British ship, unless the owner shall have obtained such certificate as hereby required; and in case any such ship shall depart from the port to which she belongs without being registered, and without having obtained a certificate, such ship shall be subject to forfeiture, and also all the guns, furniture, ammunition, tackle, and apparel to such ship belonging. By s. 17. in all transfers s. 17. Transfers of ships. of the property in any ship, the certificate of registry thereof shall be truly recited in words at length, in the bill

bill or other instrument of sale thereof, otherwise such
 34 Geo. 3. c. 68. bill of sale shall be void. And by the 34 Geo. 3. c. 68. Eng.
 Eng. the indorsement of such certificates of registry is required
 26 Geo. 3. c. 60. to be in a certain form. By the 26 Geo. 3. c. 60. s. 44. Eng.
 s. 44. Eng. every ship belonging to any subject residing in Ireland,
 which shall, by virtue of any act that may be passed in
 Ireland, be registered in any of the ports of Ireland
 under regulations similar to those herein contained, shall
 enjoy all the privileges of a British built ship, or foreign
 built ship owned by his majesty's subjects, according to
 27 Geo. 3. c. 23. the provisions of this act. And the 27 Geo. 3. c. 23. Ir.
 s. 1. Ir. was accordingly passed by the Irish parliament, contain-
 ing provisions similar to those of the 26 Geo. 3. c. 60. Eng.
 and declares (s. 1.) that the British act 12 Car. 2. c. 18. Eng.
 (save so far as altered by this act) shall be of force and
 42 Geo. 3. c. 61. effect in Ireland. The 42 Geo. 3. c. 61. I. has also ex-
 Ir. tended to Ireland the provisions of the 34 Geo. 3. c. 68.
 Eng. and 13 Geo. 2. c. 3. Eng. The 12 Car. 2. c. 18. Eng.
 seems also to have been in the contemplation of the Irish
 21 & 22 Geo. 3. legislature when the 21 & 22 Geo. 3. c. 48. Ir. was passed,
 c. 48. s. 1. Ir. which enacts, that all such clauses and provisions con-
 tained in any statutes made in England or Great Britain,
 as equally concerned the seamen of England and Ireland,
 or of Great Britain and Ireland, save so far as the same
 have been altered or repealed, shall be accepted, used,
 and executed in Ireland.

*Government of
the navy.*

22 Geo. 2. c. 33.
Eng.
19 Geo. 3. c. 17.
Eng.
37 Geo. 3. c. 140.
Eng.

The statutes which sanction the impressing men for the
 sea-service, as well as those passed for their encourage-
 ment, are of too peculiar a nature to find a place in this
 work: and the several articles for the government of his
 majesty's navy, which are contained in the 22 Geo. 2.
 c. 33. Eng. (amended by the 19 Geo. 3. c. 17. Eng. and
 37 Geo. 3. c. 140. Eng.) are also omitted. It is however to
 be observed that by this statute (s. 6. & 11.) the lord high
 admiral of Great Britain, or the commissioners for exe-
 cuting that office, are empowered to grant commissions
 for holding naval courts martial in foreign parts, or in
 the ports of Great Britain or Ireland: and by these ar-
 ticles almost every possible offence is specified, and a
 particular punishment for the most part annexed, in
 which respects this service is distinguished from that of
 the

the military. An act, similar to the mutiny act, is also annually passed for the regulation of his majesty's royal marine forces on shore, of which the last is the 48 Geo. 3. c. 14. U. K.: But by this act the lord high admiral, or three of the commissioners for executing this office, are empowered to make rules and articles for the punishment of the marine forces while on shore, and to constitute courts martial for trying and determining any crimes or offences committed by them; and also to grant commissions to any officers of royal marines, not being under the rank of field officers, for holding general courts martial. And by this act as well as the mutiny act, the offences for which a capital punishment may be inflicted on such troops while serving on shore, are mutiny or sedition; desertion; sleeping while on any post, or leaving it before relieved; holding correspondence with any rebel or enemy; striking or using any violence against a superior officer while acting as such, or disobeying any lawful command of a superior officer: and such courts martial may inflict corporal punishment, not extending to life or limb, for immorality, misbehaviour, or neglect of duty. But by the mutiny act, to misbehave before the enemy, or shamefully to abandon or deliver up any garrison, fortress, or post, or to compel or induce the governor or commanding officer so to do, may be also punished with death. The offences for which capital punishments may be inflicted under the 22 Geo. 2. c. 33. Eng. are much more numerous: many of them however are cases in which the king's military troops, or marine forces serving on shore, would be liable to be handed over to the civil power, and be subject to the punishment of death by the ordinary course of law. It is scarcely necessary to observe that no distinct navy or marine force was ever placed upon the Irish establishment, whether before the union or since; and no Irish statute therefore provides for their manning or government. The navy of Great Britain is the common bulwark of the empire, manned by the brave population, and supported by the common purse of the united kingdoms.

48 Geo. 3. c. 14.
U. K.*Marine forces.**Punishments of
soldiers and ma-
rines.*

CHAP. XIV.

Of Master and Servant.

§ 1.

Who compellable to serve in trades, and for what term;

5 Eliz. c. 4. s. 3.
Eng.

s. 4.

*Vide s. 9.

s. 7.

Who in husbandry.

s. 5. 6. & 8.

Penalty for master's putting away servant without cause or notice.

THE 5. Eliz. c. 4. Eng. is "an act containing divers orders for artificers, labourers, servants of husbandry, and apprentices." By this statute (s. 3.) no person shall retain, or be retained to work for any less term than one whole year, in any of the crafts, of clothiers, woollen-cloth weavers, tuckers, fullers, cloth-workers, sheremen, dyers, hosiers, tailors, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, curriers, saddlers, spurriers, turners, cappers, hatmakers or felt makers, bowyers, fletchers, arrow-head-makers, butchers, cooks, or millers. And by s. 4. every person unmarried, and every married person being under the age of 30 years, and having been brought up in any of said trades, or that hath used any of them for 3 years; and not having an estate of inheritance or for life of 40s. a year, nor worth £10. in goods; nor being retained with any person in husbandry, nor in any of the aforesaid or other trades; nor being lawfully retained in household, or in any office, with any nobleman, gentleman, or other; nor having a convenient farm or other holding in tillage, shall, while so unmarried or under the age of 30 years, on the request of any person using the art and mystery wherein such person hath been exercised, be retained and serve on pain of incurring such penalties as herein limited.* And by s. 7. every person between the age of 12 and 60, (with such exceptions as in s. 4. amongst others,) shall be compelled to be retained to serve in husbandry by the year with any person that keepeth husbandry, and will require such person to serve, within the same shire where he shall be so required. By s. 5. 6. & 8. if any person who shall retain any servant shall put him away before the end of his term, unless for some reasonable cause to be allowed before a justice of peace of the county, or mayor or

or other chief officer of the city, &c.; or shall put him away at the end of his term without a quarter's warning, he shall forfeit 40s.; unless he can prove by 2 witnesses such reasonable cause, or quarter's warning, before the judges of assize, justices of the peace in sessions, or the mayor and 2 aldermen (or 2 burgesses if there are no aldermen) in towns corporate. And by s. 9. if any servant so retained shall depart from his service before the end of his term, unless for some reasonable cause to be allowed as aforesaid, or at the end of his term without a quarter's warning before 2 witnesses; or refuse to serve, in husbandry, or other arts above mentioned, for the wages to be limited by this statute; or promise to serve and do not serve, then on complaint and conviction before 2 justices, or mayor and 2 aldermen (or 2 burgesses where there are no aldermen) he shall be committed to ward, until he shall be bound to serve and continue for the wages there limited; and to be discharged upon his delivery without any fee to the gaoler. By s. 11. no person that shall depart out of a service, shall be accepted into any other service, without shewing before his retainer such testimonial of his being licensed to depart from his former master as hereby prescribed, to the chief officer of the town corporate, and in every other town and place to the constable, curate, church-warden, or other head officer; upon pain that every such servant shall be imprisoned till he procure one; which if he cannot do, he shall be whipped and used as a vagabond; and every person retaining such servant without shewing such testimonial shall forfeit £5.; and if any such person be taken with a counterfeit testimonial, then to be whipped as a vagabond. This statute (s. 24.) also empowers 2 justices, or the mayor or other head officer of a town corporate, and 2 aldermen (or 2 burgesses if there be no aldermen) to appoint any woman who is of the age of 12 years and under 40 and unmarried, and forth of service, to serve, or be retained to serve, by the year, or by the week or day, for such wages and in such reasonable manner as they shall think meet; and if any such

s. 9.

Penalty for servants refusing to serve, or departing without cause or notice.

s. 11.

Testimonial required.

s. 24.

Women compellable to serve.

woman shall refuse so to serve, they may commit her to ward, until she shall be bound to serve as aforesaid.

Penalty on servants in Ireland, quitting service without consent, &c.

2 Geo. 1. c. 17. s. 2. Ir.

The 2 Geo. 1. c. 17. Ir. contains clauses somewhat analogous to those of the 5 Eliz. c. 4. *supra*. This statute recites (s. 2.) that several servants are drunkards, idle, or disorderly in their services, or waste and purloin their masters' goods, or lend the same without their masters' or mistresses' consent or knowledge, or depart their master's or mistresses' service without his or her consent, within the time for which they had obliged themselves to serve; and enacts that any justice of peace of any county or city, or chief magistrate of any city or town corporate, where the master or mistress inhabits, may issue a warrant to bring such servant before him, and, on proof upon oath of any such offence, put such servant in the stocks, in some market town, on the market day, or in the parish stocks, for any time not exceeding 6 hours, or send him to the house or correction of the county, to be kept at hard labour for any time not exceeding 10 days; and in case the master, &c. shall after the time of punishment is expired, desire the servant to return to service for the remainder of the time, that by agreement such servant ought to serve, then such justice shall order the servant so to do; and in case such servant shall refuse or neglect so to do, then such justice, &c. shall again commit such servant to the house of correction, to be kept to hard labour, and corporally punished, during the time he ought to serve, or until the next general quarter sessions, where the justices may either discharge or continue such servant. And by s. 3. no servant shall hire, or offer to be hired, into any service, before the time for which he did contract or hire himself be expired, without license from his master, &c. unless such servant do first give a month's notice thereof to his master, &c.; or on proof thereof upon oath before any justice of peace of the county, or chief magistrate of any town corporate where such servant resides, he shall be committed to the house of correction for any time not exceeding 10 days, or put in the stocks in some market town, on the market day, for any time not exceeding 6 hours.

s. 3.

Or without notice.

hours. By s. 4. on the putting away any servant, or upon such servant leaving his service, the master, &c. shall give a certificate in writing that such person therein named was his servant, and is discharged, and certify in said discharge, if it is desired, or if such master shall think fit, the behaviour of such servant. And by s. 5. no master, &c. shall hire a servant without a discharge under the hand of the master with whom he last dwelt; and if any person shall refuse to give such discharge and certificate, some neighbouring justice or chief magistrate, &c. shall by letter to such master, or if a peer to his steward or bailiff, require the reason why such discharge, &c. is refused; and if no answer be given within 5 days, or if the cause assigned shall be found insufficient, such justice, &c. may give a certificate of the reasons for refusing such discharge; for which certificate the justice, &c. or his clerk shall not take any fee. And if any servant shall be convicted of counterfeiting or producing a counterfeit certificate, under the hand of the master or justice, &c. or steward, &c. of any peer or peeress, he shall, upon conviction before 2 justices by the oath of 1 witness, be committed to the house of correction for 3 months, and whipt on some market day, between the hours of 11 and 12 in the morning, through the streets of the town where the house of correction stands. By s. 6. no servant shall recover wages by this act* without producing to the justice, such discharge or certificate, or proving by a witness that such was given; and if any person shall knowingly take into his service any person who has been in any former service, without such discharge or certificate as aforesaid, he shall upon conviction at the general quarter sessions, &c. forfeit £5. one moiety to the use of the poor of the parish, and the other to the informer.

s. 4.

Masters to give discharges.

s 5.

*Or in their default justices may.**Penalty for counterfeiting certificate.*

s. 6.

*Penalty for hiring a servant without such discharge.***Vide page 391*

By the 5 Eliz. c. 4. s. 15. Eng. (as amended by the 2 Jac. 1. c. 6. Eng.) the justices of the peace of every shire, &c. and the sheriff of such county, if he conveniently may, and every mayor and other head officer within any city, &c. wherein is any justice of the peace, shall at the Easter sessions for such county, or within 6 weeks after, (or at the sessions for any several riding, &c.) assemble such discreet persons as they shall think meet, and

Wages of servants, &c. rated and assessed.

5 Eliz. c. 4. s. 15.

Eng.

2 Jac. 1. c. 6.

s. 3. 5. 6. Eng.

5 Eliz. c. 4.
s. 18. Eng.

s. 19.

s. 20.

s. 12.

s. 22.

33 Hen. 8. st. 1.
c. 9. Ir.

*Wages regu-
lated in Ireland.*

47 Geo. 3. st. 1.
c. 43. I.

and rate and appoint the wages of all artificers, handicraftsmen, husbandmen, or apprentices of husbandry, or other labourers, servants, or workmen, by the year, or by the day, week, month, or otherwise, with meat and drink, or without; which rates shall be ingrossed in parchment, and kept amongst the records of the county or town corporate, and be proclaimed by the sheriff or mayor in such places as to them shall seem convenient. And by s. 18. if any person shall retain or keep any servant, workman, or labourer, or give any greater wages than appointed by said proclamations, contrary to this statute, he shall, on conviction before any of the said justices or head officers, be imprisoned for 10 days, and forfeit £5. And by s. 19. every person that shall be so retained, and take wages contrary to the said statute or proclamation, and be convicted before the justices aforesaid or any 2 of them, or before the mayor or other head officers, &c. shall be imprisoned for 21 days. And by s. 20. every retainer, promise, gift, or payment of wages, or other thing, contrary to said act, and every writing and bond to be made for that purpose shall be void. This statute (s. 12.) defines the time of working for artificers and labourers, between March and September, and September and March. And by s. 22. all artificers and persons meet to labour are compellable to work in harvest, upon pain of imprisonment in the stocks for 2 days and a night. By the 33 Hen. 8. st. 1. c. 9. Ir. the justices of peace in every county shall, in their sessions holden within one month after Easter and Michaelmas, having respect to the price of victuals and other necessities, make proclamations how much every artificer and labourer shall take by the day, both with meat and drink, and without, between said sessions; and also at the sessions next after Easter, how much every servant at husbandry shall take by the year following, with meat and drink: and every of them that shall take any thing contrary to the said proclamation, shall forfeit the thing so taken, and be imprisoned by the discretion of the justices at their sessions; half of said forfeiture to the king, and the other half to the informer. And by the 47 Geo. 3. st. 1. c. 43. I. the provisions of this

this act are declared to extend to all counties of cities and counties of towns, in respect to which no special provision has been made by any act of parliament for ascertaining such wages. For the more easy recovery of wages, the 2 Geo. 1. c. 17. s. 1. Ir. empowers any justice of the peace of the county where the master or mistress dwells, not living more than 5 miles from such dwelling place, and if no justice live within 5 miles, then the next neighbouring justice, and every chief magistrate of any city or town corporate, upon the complaint of any day-labourer, artificer, or servant, whose demand for wages shall not exceed £3., upon oath that he cannot receive his wages, to summon in writing such master, &c. or person employing such artificer (not being a peer or peeress of this kingdom) to appear before him; in which summons the sum demanded shall be expressed, and the place and time for such person's appearance, (for which summons the said justices, &c. or their clerk, may take 6*d.*;) and in case the said master, &c. shall not appear, then said justices, &c. upon proof on oath that said summons was delivered to said master, &c. or to his son, daughter, or menial servant, of the age of 16 years or upwards, at the usual place of abode of such master, &c. may proceed to hear and determine said demand by examining witnesses, and parties, upon oath; and if the sum adjudged shall not be paid within 10 days, such justice, &c. may by warrant direct the same to be levied by distress and sale, as also 6*d.* for the summons, 6*d.* for the warrant, and 12*d.* for the constable. But by s. 10. all complaints under this act must be exhibited, by servants within 3 calendar months after they are dismissed or leave their service; by artificers or day labourers within 3 months after they have done their work; and by masters, &c. within the same period after the cause of complaint shall arise.

2 Geo. 1. c. 17.
s. 1. Ir.

Mode of re-
covering wages.

s. 10

There are various statutes in England giving a jurisdiction to justices of peace in respect to the disputes between masters and their workmen, in several branches of trade and manufacture. But the 20 Geo. 2. c. 19. Eng. (as amended by the 31 Geo. 2. c. 11. Eng.) is of a general nature, which provides, that all differences and disputes between masters or mistresses, and servants [*in husbandry hired

Differences be-
tween master
and servant, &c.

20 Geo. 2. c. 19.
Eng.

31 Geo. 2. c. 11.
Eng.

*Not in 25
Geo. 2. c. 8. Ir.

*£5. by the
25Geo.2.c.8.Ir.
† £3. by the
25Geo.2.c.8.Ir.

s. 2.

† Not in the
25Geo.2.c.8.Ir.

s. 5.

§ £5. by the
25Geo.2.c.8.Ir.
s. 6.

hired for one year or longer, or for a less time,] and artificers, handicraftsmen, miners, colliers, keel-men, pit-men, glass-men, potters and other labourers, shall be determined by 1 justice of peace of the county, &c. where such master, &c. shall inhabit, or by the mayor, or other head officer where such complaint shall be made; which said justice, &c. may examine upon oath any such servant, &c. or witness, and summon such master to appear before him within a reasonable time, not less than 48 hours; and order reasonable payment of wages to such servant, &c.; provided that the sum in question do not exceed [£10.*] with regard to any servant; nor [£5.†] with regard to any artificer, &c.; and in case of refusal, or non-payment by the space of 21 days after such determination, such justice, &c. may levy the same by distress and sale. And by s. 2. such justice, &c. on complaint of the master, &c. upon oath concerning any misdemeanor or ill-behaviour in his service or employment, [†although no assessment of wages has been made that year,] may determine the same and punish the offender by commitment to the house of correction for any time not exceeding 1 calendar month, or by abating some part of his wages, or by discharging such servant, &c. from his service or employment; and in like manner, such justice, &c. may upon any complaint upon oath by any such servant, &c. against such master, &c. concerning any misuse, refusal of necessary provision, cruelty, or other ill treatment, summon such master, &c. to appear at a reasonable time, and discharge such servant, &c. whether such master, &c. shall appear or not, proof being made upon oath of his being duly summoned; which discharge shall be given *gratis* under the hand and seal of such justice, &c. But by s. 5. if any person shall think himself aggrieved by any determination, &c. under this act (except any order of commitment) he may appeal to the next general quarter sessions of the county, &c. where such determination shall be made, which sessions may finally determine the same, and award costs, not exceeding [40s.§] to the appellant or respondent. And by s. 6. no writ of *certiorari* shall issue to remove any proceedings under this act. The 25 Geo. 2. c. 8. Ir. as amended by the 29 Geo. 2. c. 8. Ir. contains similar provisions. By the

the 6 Geo. 3. c. 25. s. 4. Eng. any artificer, &c. who shall not fulfil his contract, or be guilty of other misdemeanor, may be committed by a justice, &c. to the house of correction for 3 months, or not less than 1 month.

II. Next as to *apprentices*, the 5 Eliz. c. 4. Eng. contains several provisions, enabling householders to take as apprentices, the sons of freemen not occupying husbandry, nor being labourers, to serve in husbandry, and to exercise trades in corporate towns and other market-towns and places, but under certain restrictions as to the value of the parent's estate, and the number of apprentices, &c. which seem to be obsolete.* And by this statute (s. 35.) if any person shall be required by any householder using half a plough-land at least in tillage, to be an apprentice, and to serve in husbandry, or in any art, mystery, or science herein expressed, and shall refuse so to do, then on complaint of such housekeeper to a justice (or head officer) he shall send for the person refusing, and if he shall think him meet to serve, and such person refuse to be bound, he shall commit him to ward until he will be bound. But by s. 36. no person shall be bound to enter into any apprenticeship, other than such as be under the age of 21 years. And by s. 25. such binding must be by deed indented. And by s. 41. all indentures, covenants, promises, and bargains for having or taking apprentices, otherwise than as directed by this statute, shall be void; and every person that shall take an apprentice contrary to this statute shall forfeit £10. By s. 42. & 43. every person who shall be bound by indenture to serve as an apprentice, in any art, science, occupation, or labour, according to this statute, albeit he be within the age of 21 years, shall be bound to every intent, as if he were of full age at the time of making the indentures. And by s. 31. no person shall set up, occupy, use or exercise any craft, mystery, or occupation now used or occupied within the realm of England or Wales, except he shall be brought up therein 7 years at least as an apprentice by this statute; nor to set any person on work therein, except he shall have been apprenticed as aforesaid, or else having served as an apprentice will become a journeyman, or be hired by the year; on pain of forfeiting

§ 2.

*Apprentices
compellable to
serve.*

5 Eliz. c. 4.

**Vide Burn's
Justice, Tit.
Apprentice.
s. 35.*

s. 36.

At what age.

s. 25. & 41.

*Binding to be by
indenture.*

s. 42. & 43.

s. 31.

*None to exercise
trades who have
not served as ap-
prentices.*

Exceptions. 40s. for every month. But a special exemption is made as to makers of linen cloth, and other manufactures of hemp and flax, and makers of tapestry-hangings by the 15 Car. 2. c. 15. Eng. And by the 6 & 7 W. 3. c. 17. s. 12. Eng. any apprentice discovering and convicting 2 offenders guilty of coining, shall be deemed a freeman, and may exercise his trade as if he had served out his time.

Binding of poor apprentices. By the 43 Eliz. c. 2. s. 5. Eng. as amended by the 18 Geo. 3. c. 47. Eng. the church-wardens, and overseers of the poor, or the greater part of them, by the assent of 2 justices (one to be of the *quorum*) may bind any children, whose parents they shall judge not able to maintain them, to be apprentices, where they shall see convenient, till such man-child shall come to the age of 21, and such woman-child to the age of 21 or marriage. And by the 21 Jac. 1. c. 28. s. 1. and 3 Car. 1. c. 4. s. 22. Eng. all persons to whom the overseers shall so bind any apprentices, may take and keep them as apprentices. By the 8 & 9 W. 3. c. 30. s. 5. Eng. where any poor child shall be appointed to be bound apprentice, the person to whom he is appointed to be bound shall receive and provide for him, and also execute the other part of the indentures; and if he shall refuse so to do, oath being thereof made by one of the church-wardens or overseers before 2 justices, &c. he shall forfeit £10. to the use of the poor of the parish or place; saving always to the person to whom any poor child shall be appointed to be bound apprentice, his appeal to the next sessions, whose order therein shall be final. And the 20 Geo. 3. c. 36. Eng. (amended by the 42 Geo. 3. c. 46. E.) contains a similar provision, in respect to binding apprentices in hundreds or other districts incorporated by act of parliament. The 7 Jac. 1. c. 3. Eng. regulates the application of money given to bind poor apprentices. And by the 2 & 3 Ann. c. 6. Eng. it shall be lawful for 2 justices in counties, &c., and for the head officers in corporations, and for the church-wardens and overseers of the several parishes with the consent of such justices, &c. to bind out any boy at the age of 10 years or upwards who shall be chargeable, or whose parents shall be chargeable, or who shall beg for alms, to be an apprentice to the sea service, to any subject being master or

21 Jac. 1. c. 28.
s. 1. Eng.
3 Car. 1. c. 4.
s. 22. Eng.
8 & 9 W. 3.
c. 30. s. 5. Eng.

20 Geo. 3. c. 36.
Eng.
42 Geo. 3. c. 46.
E.

7 Jac. 1. c. 3.
Eng.

2 & 3 Ann. c. 6.
Eng.

*Binding to the
sea service.*

or owner of any vessel, until he shall attain the age of 21 years. But by the 4 Ann. c. 19. s. 16. Eng. no master shall be obliged to take any such apprentice under 13 years of age, and who shall not be fitly qualified both as to health and strength of body for that service. And if any master who hath been obliged to take such parish boy an apprentice, shall die during the term, his widow, or his executor or administrator may assign over such apprentice to any other master who hath not his complement of apprentices. The 2 & 3 Ann. c. 6. Eng.; 4 Ann. c. 19. Eng.; 13 Geo. 2. c. 17. Eng.; and 2 Geo. 3. c. 15. Eng. contain provisions relative to the protection of apprentices from being impressed in the sea service. By the 28 Geo. 3. c. 48. Eng. a power is given to the church-wardens and overseers of the poor, with the consent of 2 justices, to bind any boys of the age of 8 years or upwards, who or whose parents are chargeable to the parish, or who shall beg for alms, apprentices to chimney sweepers, until the age of 16 years. This act appoints the hours at which such apprentices shall be employed at the different seasons of the year; limits the number of apprentices which each chimney-sweeper shall keep; and gives a power to 1 justice to fine any such master, in a sum not exceeding £10. nor less than £5. who shall misuse or evil treat his apprentice.

By the 5 Eliz. c. 4. s. 35. Eng. if any master shall misuse or evil intreat his apprentice, or if the apprentice shall have just cause to complain, or the apprentice do not his duty to his master, then the master or apprentice may complain to a justice of peace of the county, or to the mayor or other head officer of the city, &c. where the master dwelleth; and if such justice, &c. cannot compound the matter, he shall take bond of the master to appear at the next sessions; and the justices or 4 of them at the least (one of them to be of the *quorum*) or the mayor, &c. with the consent of 3 of his brethren, or men of the best reputation in such city, &c. may discharge such apprentice by writing under their hands and seals; or, if the default be found in the apprentice, may cause due correction to be administered unto him. And by the 20 Geo. 2. c. 19. Eng. (as amended by the 32 Geo.

4 Ann. c. 19.
s. 16. Eng.

13 Geo. 2. c. 17.
Eng.

2 Geo. 3. c. 15.
Eng.

28 Geo. 3. c. 48.
Eng.

Binding to chimney-sweepers.

Disputes between masters and apprentices.

5 Eliz. c. 4. s. 35.
Eng.

32 Geo.

20 Geo. 2. c. 19. Eng.) on complaint to 2 justices by any

32 Geo. 3. c. 57. s. 11. & 12. Eng. parish apprentice, or other apprentice upon whose bind-

ing out no larger a sum than £5. was paid, concerning any misuse or ill treatment, they may summon the master or mistress to appear; and on proof upon oath of the truth of the complaint, may discharge the apprentice and order the master to deliver up his clothes, and to pay a sum not exceeding £10. to place him with another master or to be otherwise applied for his benefit, from which order

Ante page 392 such master, &c. may appeal as by s. 5. and such justices, &c. may on the complaint upon oath by any master or mistress against any such apprentice, concerning any misdemeanor, discharge such apprentice, and commit such offender to the house of correction, for a time not

Apprentices disposed of in case of death of master, &c.

exceeding 3 calendar months. By the 32 Geo. 3. c. 57. s. 1.

Eng. covenants for the maintenance of parish apprentices shall not be in force longer than 3 months after the death of the master or mistress; during which time such apprentices shall serve the executors, &c. of the master, &c. so dying, or such person as such executors, &c. shall ap-

s. 1. & 2.

point. And by s. 2. within 3 months after the death of such master, &c. 2 justices may on the application of the widow of the master, or husband of the mistress, or by any son, daughter, brother, or sister, of such master or mistress, order such apprentices to serve the residue of their terms with any one so making such application.

s. 7.

And by s. 7. masters may assign over apprentices, with the consent of 2 justices, to any person who shall accept such apprentice, and acknowledge himself to be bound

s. 6.

by the indenture of apprenticeship. By s. 6. a power is given to 2 justices to order and levy the sums necessary

s. 8.

for maintenance and clothing of apprentices: and by s. 8. to discharge such apprentices whose masters, &c. cannot maintain or employ them.

s. 9.

But by s. 9. this act shall not extend to apprentices with whom more than £5. shall be

33 Geo. 3. c. 55. Eng.

given. The 33 Geo. 3. c. 55. Eng. also empowers 2 justices at a special sessions, to impose a fine of 40s. on any master, &c. who shall misuse any apprentice, upon whose binding not more than £10. was paid; subject to an ap-

5 Eliz. c. 4. s. 47. Eng.

24 Geo. 2. c. 55. Eng.

peal to the quarter sessions. By the 5 Eliz. c. 4. Eng. and 24 Geo. 2. c. 55. Eng. the justices, mayors, and other

head

head officers are enabled to issue their warrants to ap- *Apprentices abs-*
prehend any apprentices [or servants] who shall flee into *conding.*

another shire. And by the 6 Geo. 3. c. 25. Eng. if any *6 Geo. 3. c. 25.*
apprentice shall absent himself from his master's service, *s. 1. & 3. Eng.*

he shall whenever he shall be found (so it be within 7 years after the expiration of his term), be compelled to serve his master, for so long a time as he shall have absented himself; unless he shall make satisfaction to his master for the loss he shall have sustained by his absence: and if he shall refuse so to serve, or to make satisfaction, the master may complain upon oath to 1 justice where he shall reside; who shall issue his warrant for apprehending such apprentice: and such justice on hearing the complaint, may determine what satisfaction shall be made to such master by the apprentice. And if the said apprentice shall not give security to make satisfaction according to such determination, such justice may commit him to the house of correction for any time not exceeding 3 months. But by s. 2. this act shall not extend to any

s. 2.

apprentice whose master shall have received with him the sum of £10. And by s. 5. an appeal is given (except in cases of commitment) to the justices at the next general quarter sessions. It is a provision of the annual mutiny

s. 5.

act, that if any apprentice shall enlist himself, he shall be guilty of a misdemeanor, and be liable to be imprisoned in any gaol or house of correction, and kept to hard labour for 2 years; and after the expiration of his apprenticeship shall be liable to serve in any regiment of the king's regular forces, and may be taken as a deserter.

Apprentices en-
listing.

The 42 Geo. 3. c. 73. U. K. contains several regulations for preserving the health and morals of apprentices in cotton and woollen mills and factories.

42 Geo. 3. c. 73,
U. K.

Health and mo-
itals of appren-
tices.

It was a part of the policy of the popery laws in Ireland, to restrict papists as to the number of apprentices to be kept by them, and to exclude them from being apprentices to certain trades, or to alien traders.

Powers of jus-
tices as to ap-
prentices in Ire-
land.

But the 19 & 20 Geo. 3. c. 19. s. 3. Ir. enacts, that every manufacturer, as well journeyman as master, may take as many apprentices as he shall think fit, whether such master or apprentice be protestant or papist. And by the 32 Geo. 3. c. 21. s. 16. Ir. and 33 Geo. 3. c. 21. s. 1. Ir.

this

this distinction between protestants and catholics is in effect done away. A jurisdiction is given to the justices of peace in Ireland in respect to apprentices as well as to servants, by the 2 Geo. 1. c. 17. Ir. By this statute (s. 16.) any 2 justices may hear and determine the complaints of apprentices employed in any handy-craft trade, or manufacture; and remove any such apprentice, if they shall find just cause (by reason of the failure, death, or severity of their masters or mistresses) from such service, by order under their hands and seals; and by the like order turn over such apprentices to some master, &c. of the same trade, for the remainder of the term of such apprenticeship: but by s. 17. such master, &c. may appeal from such order to the justices at the next general quarter sessions of such county, &c.; whose orders shall be final.

2 Geo. 1. c. 17.
s. 16. Ir.

s. 17.

25 Geo. 2. c. 8.
s. 3. & 4. Ir.
29 Geo. 2. c. 8.
s. 13. Ir.

And by the 25 Geo. 2. c. 8. s. 3. Ir. any 2 justices (or 1 justice by the 29 Geo. 2. c. 8. s. 13. Ir.) may upon the complaint of any apprentice, upon whose binding out no larger a sum than £5. was paid, touching any misusage, refusal of necessary provision, cruelty, or ill treatment, summon the master or mistress to appear, and upon proof of the matter of complaint upon oath (whether the master, &c. be present or not, if service of the summons be also proved upon oath) may discharge such apprentice, by warrant under their hands and seals; for which warrant no fee shall be paid: and by s. 4. such justices may also hear and determine the complaint of any master upon oath, against any apprentice, touching any misdemeanor or ill behaviour, and punish the offender by commitment to the house of correction, for a time not exceeding a calendar month; or discharge such apprentice as aforesaid.* These clauses are taken from the 20 Geo. 2. c. 19. Eng. The 3 Geo. 3. c. 34. Ir. which is the leading statute for the regulation of the linen manufacture of Ireland, provides (s. 22.) that no linen weaver or linen manufacturer shall employ his apprentice for any unreasonable time in husbandry, or other work not relating to said trade, except only during 24 days in harvest, upon pain of forfeiting 10s. for the 1st offence, 20s. for the 2d, and for the 3d offence such apprentice shall, if he desires it, be discharged,

*Vide pages
392-6.

3 Geo. 3. c. 34.
s. 22. Ir.

Apprentices to
manufacturers.

discharged, and have his apprentice fee returned to him. And the 42 Geo. 3. c. 73. U. K. (*ante* page 397.) extends also to Ireland. And on the other hand the 31 Geo. 3. c. 23. s. 3. Ir. provides, that if any apprentice bound by indenture to serve in any trade or mystery, shall elope or run away from his master or mistress, or wilfully refuse to learn or work at such trade, &c. or shall wilfully cut, deface, spoil, or by mismanagement or neglect injure any work, or any loom, tool, or materials entrusted to him, he shall on conviction before any magistrate, upon the oath of 1 witness, be imprisoned for any time not exceeding 3 months.

31 Geo. 3. c. 23.
s. 3. Ir.

Penalty of apprentices running away, &c.

By the 2 Geo. 1. c. 17. s. 11. Ir. the minister and church-wardens of every parish are empowered, with the consent of a justice of peace, &c. to bind out any poor child whom they shall find begging, or other poor child, with the consent of the father, if living, or of the mother, if the father be dead, to any honest and substantial protestant house-keeper, or protestant tradesman, that will entertain such child as a menial servant till the age of 21; or to any credible tradesman till such apprentice be 24 years old: and by s. 12. such age shall be ascertained in the indentures, and an exemplification thereof in the vestry book of the parish, signed and sealed by the minister and church-wardens, shall in all controversies about such age, be as authentic as a counter-part of such indentures. By s. 13. on the death of the person receiving any such poor child, his executors or administrators shall have a right to the labour of such apprentice for the remainder of the time in his indenture. And by s. 14. the usual covenants in favour of servants in other indentures, shall be inserted in these; and a justice of peace may on complaint of ill usage or cruel treatment examine into it, and, if fully proved, discharge such apprentice, and bind him to some other master, &c. for the remainder of the time; or in case the complaint appear groundless, such justice may order reasonable correction for such apprentice. And if any such apprentice shall depart the service of his master, &c. without consent, he shall be punished in like manner as a hired servant by s. 2. (*ante* page 388):

Binding poor apprentices in Ireland.

2 Geo. 1. c. 17.
s. 11. Ir.

s. 12.

s. 13.

s. 14.

Jurisdiction of justices to hear complaints.

and

and if any person shall knowingly entertain any such apprentice, either as a household servant, or as an apprentice or journeyman, before his time of service be expired, unless with the consent of the person to whom he was bound, or unless regularly discharged by a justice of peace, he shall forfeit £40. to the person having a right to the service of such menial servant or apprentice. This act provides (s. 15.) that in case any frivolous complaint shall be made in pursuance of this act, the justice or chief magistrate may award 2s. 6d. for costs, to be levied off the goods of the person complaining, or put such person in the stocks for a time not exceeding 2 hours, if he shall refuse to pay the sum awarded. And all determinations made by any justice, &c. in pursuance of this act shall be final. The 23 Geo. 2. c. 11. Ir. recites the 2 Geo. 1. c. 17. Ir. *supra*, and further provides, that the incorporated society for promoting English protestant schools, may appoint persons in every province to take up children under the age of 12, and above 5 years old, who shall be found begging, or led about by vagrant beggars; which persons may apprehend, and by the order and directions of a justice of peace of the county, &c. convey such children to such charter school as shall be convenient. And said society is further empowered by s. 2. to send such children so taken up, to be educated in any charter school of the kingdom, and when of proper age to bind them out to protestant masters and mistresses till the age of 21, or to creditable protestant tradesmen, till they shall be 24 years old. But the 25 Geo. 3. c. 48. s. 14. & 15. Ir. which also enables said society to bind out the children under their care to protestant tradesmen or manufacturers, enacts, that no such child shall be bound to serve longer, if a male, than till the age of 21, or, if female, till the age of 18 years. The 23 Geo. 2. c. 11. s. 3. provides for the ascertaining the age of every child so bound out, in like manner as the 2 Geo. 1. c. 17. s. 12. *supra*. And by s. 4. if any child received into such charter or other charity school, or bound out as aforesaid, shall withdraw himself from such school or behave disorderly, such child shall be punished

as

hired servants under the 2 Geo. 1. c. 17. But by s. 5. & 6. any party may appeal from any thing done in pursuance of this act, to the next general quarter sessions of the county, &c. where the party complained of in such appeal shall reside, notice of which appeal shall be given in writing to the other party, 14 days before such sessions; (or if there be not sufficient time, then such appeal may be to the 2nd quarter sessions, on giving the like notice;) and a certificate in writing, under the hands and seals of the justices, of their determination, shall be final; and any person who shall neglect or refuse to comply with the same, may be indicted for a misdemeanor at some following quarter sessions, and punished accordingly. By s. 8. any child received into any charter-school with the consent of the father or mother, or at the request of any person being, or pretending to be, the relation or friend of such child, though without the consent of the father, &c. shall be and reputed to be the child of the public; and may be disposed of as aforesaid, unless the father &c. shall, within 3 months after the reception of such child into such charter-school, demand the same as having been placed there without his knowledge and consent; and also pay to the local committee 2s. for every week the child shall have been maintained therein; on which the child shall be restored. And by s. 7. any person who shall seduce or entice to run away, or forcibly carry away, or attempt to carry away, any child placed, or going to be placed, in any of the said charter or charity-schools, or from their services or apprenticeships, if bound out; or knowingly harbour, conceal, or entertain any such child, being thereof lawfully convicted, shall be committed to the house of correction for 6 months. The corporations for the poor of the several counties, established by the 11 & 12 Geo. 3. c. 30. Ir. are also enabled to apprentice out poor children as already stated.* And by the 25 Geo. 3. c. 48. s. 16. Ir. all persons apprenticed out to protestant tradesmen, or manufacturers, from the said charter-schools, (foundling hospital or house of industry, Dublin) and also from the Hibernian society, and marine school, are privileged to carry on their trades in any city or corporate town, without interruption, or the payment of any duty.

s. 5. & 6.

s. 8.

Children placed at charter schools deemed the children of the public.

s. 7.

Penalty for seducing, &c. children from such schools.

**Vide page 285 25 Geo 3. c.48. s. 16. Ir.*

Privileges of such apprentices.

CHAP. XV.

Of Husband and Wife.

Marriages good
if not within le-
vitical degrees.

32 Hen. 8. c. 38.
Eng.

33 Hen. 8. st. 1.
c. 6. Ir.

2 & 3 Edw. 6.
c. 20. Eng.

And notwith-
standing pre-
contracts.

26 Geo. 2. c. 33.
s. 13. Eng.

IT is declared by the 32 Hen. 8. c. 38. Eng. that all marriages within the church of England, contracted between lawful persons, that be not prohibited by God's law to marry, being contract and solemnized in the face of the church, and consummate with bodily knowledge, or fruit of children or child had between the parties, shall be lawful and indissoluble, [notwithstanding any precontract of matrimony not consummate with bodily knowledge, which either of the parties shall have contracted before the marriage so solemnized and consummate, &c.] and notwithstanding any dispensation, prescription, law, or otherwise; and no reservation or prohibition, God's law except, shall impeach any marriage without the levitical degrees; and no person shall be admitted in any spiritual court, to any process, plea, or allegation contrary to this act. The 33 Hen. 8. st. 1. c. 6. Ir. is the corresponding statute in Ireland. So much of the 32 Hen. 8. c. 38. as concerned pre-contracts, was repealed by the 2 & 3 Edw. 6. c. 23. Eng. which enacted, that when any cause or contract of marriage was pretended to have been made, the king's ecclesiastical judge of the place might hear and examine the said cause; and having the said contract sufficiently and lawfully proved before him, give sentence for matrimony, commanding solemnization, cohabitation, consummation, and tractation, as becometh man and wife to have, with inflicting all such pains upon the disobedients and disturbers thereof, as before the said statute he might have done. But by the 26 Geo. 2. c. 33. s. 13. Eng. no suit or proceeding shall be had in any ecclesiastical court, to compel a celebration of any marriage *in facie ecclesiæ*, by reason of any contract of matrimony, whether *per verba de præsentī*, or *per verba de futuro*. No Irish statute contains any such provision,

Vide. 50. Geo. 3. c. 11. s. 1.
87

vision: but on the contrary the 12 Geo. 1. c. 3. s. 4. Ir. ^{12 Geo. 1. c. 3. s. 4. Ir.} recites, that doubts had arisen, whether marriages consummated by carnal knowledge could be avoided by pre-contracts without consummation, which had been the ground of many vexatious suits; and therefore declares and enacts, that no contract of marriage only, not consummated by the carnal knowledge of the parties, shall be of any force toward making void a subsequent marriage consummated by such carnal knowledge. The 32 Hen. 8. c. 38. Eng. which was thus in part repealed by the 2 & 3 Edw. 6. c. 23. Eng. was repealed in the whole by the 1 & 2 Ph. & M. c. 8. s. 19. Eng.; but was again revived by the 1 Eliz. c. 1. s. 11. & 12. Eng. so far as it was not repealed by the 2 & 3 Edw. 6. And in Ireland also the 33 Hen. 8. st. 1. c. 6. Ir. seems to have been repealed by the 3 & 4 Ph. & M. c. 8. Ir., amongst the other statutes made since the 20th year of king Henry VIII. against the supremacy of the see of Rome. But it is declared to be revived, so far as doth touch and concern degrees of consanguinity, by the 2 Eliz. c. 1. s. 2. Ir. It is also enacted by the 25 Hen. 8. c. 22. Eng. and 28 Hen. 8. c. 7. ^{2 Eliz. c. 1. s. 2. Ir. 25 Hen. 8. c. 22. Eng. 28 Hen. 8. c. 7. Eng.} Eng. that no person shall marry within the degrees prohibited by God's law, that is to say the son to marry the mother or the step-mother; the brother the sister; the father his son's daughter, or his daughter's daughter; or the son to marry the daughter of his father procreate and born by his stepmother, or the son to marry his aunt, being his father's or his mother's sister, or to marry his uncle's wife; or the father to marry his son's wife; or the brother to marry his brother's wife; or any man to marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter, or his wife's sister. And the 28 Hen. 8. c. 2. s. 2. Ir. in like manner prohibits marriages within the said degrees. ^{28 Hen. 8. c. 2. s. 2. Ir.}

Next as to the disability arising from want of consent of parents or guardians, the 4 & 5 Ph. & M. c. 8. s. 4. Eng. ^{Consent of parents or guardians necessary for minors.} which is "An Act for the punishment of such as shall take away maidens that be inheritors, being within the age of 16 years, or that marry them without the consent of their parents:" to which the 10 Car. 1. st. 3. c. 17. Ir. is a corresponding act, will be stated in another part of

26 Geo. 2. c. 33.
s. 11. Eng.

this work, (Book 4.); as well as other statutes also which provide against the forcible abduction, or stealing of heiresses. But some of the provisions of the Marriage Act, 26 Geo. 2. c. 33. Eng. which is intituled "An Act for the better preventing of clandestine marriages," are proper for this place. By s. 11. all marriages solemnized by license, where either of the parties, not being a widower or widow, shall be under the age of 21 years, which shall be had without the consent of the father of such of the parties so under age, if then living, first had, or if dead, of the guardians of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian, then of the mother if living and unmarried, or if there be no mother living and unmarried, then of the guardians of the person appointed by the court of chancery, shall be void to all intents.

s. 12.

Consent of
chancellor in
some cases equi-
valent.

But by s. 12. in case any guardian, or mother, shall be *non compos mentis*, or in parts beyond the seas, or shall refuse or withhold their consent to the marriage of any person, any person desirous of marrying, may apply by petition to the lord chancellor, who may proceed in a summary way to examine the cause, and declare the marriage to be proper, if it shall so appear; which shall be as good as if the guardian, &c. had consented. No Irish statute requires the consent of parents or guardians, for the purpose of giving validity to such marriages

9 Geo. 2. c. 11. Ir. is intituled "An Act for the more effectual preventing of clandestine marriages," and recites, *inter alia*, "That the several laws made to prevent clandestine marriages have proved ineffectual, and notwithstanding the penalties laid on those who celebrate such marriages, many persons under age who are entitled to considerable fortunes, are frequently married without the consent of their parents or guardians, to the great prejudice of many families; and protestants frequently intermarry with papists, whereby the popish interest and religion are increased and propagated;" and therefore enacts, that all marriages and matrimonial contracts, where either of the parties are under the age of 21 years, had without the consent of the father (if living) in writing under his hand first had, or (if dead) of the

Consent required
in certain cases
only, in Ireland.

guardian

guardian obtained in the same manner, or of the lord chancellor in case no guardian be appointed, shall be void to all intents, and shall not be deemed as marriages or contracts by any spiritual court, if either of the parties be entitled to any real estate of the value of £100. *per annum*, or to any personal estate of the value of £500., or if the father or mother of the party so marrying under age be in possession of a real estate of the value of £100. *per annum*, or of any personal estate of the value of £2000. And by s. 2. it shall be lawful for the father or guardian of any person who shall marry, or be contracted in marriage, when under the age of 21 years, or, if there be no father or guardian, for any person to be appointed by the lord chancellor, to commence a suit in the proper ecclesiastical court to disannul such marriage, &c. which suit shall be prosecuted with effect; and if it appears in said suit by proper proof, that either of the parties was at the time of such marriage, &c. under the age of 21 years, such marriage shall be adjudged by such court to be void. But by s. 3. if no such suit be commenced within one year after, such marriage or contract shall from the expiration of such year be good, to all intents and purposes, as if this act had not been made. And this act is explained and rendered more effectual by the 23 Geo. 2. c. 10. Ir. which enacts, that it shall be lawful for the father or guardian of such infant who shall marry without such consent as in the 9 Geo. 2. c. 11. mentioned, where the parties entering into the same, or either of them, shall leave the kingdom or abscond, by which means it may be difficult to serve process in a suit to be instituted for annulling such marriage, or matrimonial contract, or in such case if there be no father or guardian, for any person to be appointed by the lord chancellor for that purpose, within one year after such marriage, &c. to file an allegation in the ecclesiastical court of the diocese, where such infant was usually resident before his or her going out of the kingdom, or entering into such marriage &c. in the same manner as if the necessary parties had appeared in a suit instituted in the said court to annul such marriage, &c.; which court shall thereupon issue process to compel the persons so marrying or entering into

s. 2.

*Proceedings to
annul marriages
of minors.*

s. 3.

23 Geo. 2. c. 10.
s. 1. Ir.

into such contract, to appear in such court within a time therein to be limited, and shall have power to proceed to hear and determine said cause as if the parties were resident, and the said marriage, &c. entered into within said diocess, if it shall appear by affidavit that such process was served in the usual manner on the said parties whether in or out of the kingdom: and if it shall appear in said suit by proper proof, that the said marriage, &c. was contrary to the 9 Geo. 2. c. 11., such marriage, &c. shall be adjudged by said court to be void to all intents.

s. 2.

And by s. 2. in case the father or guardian of an infant who shall so marry, &c. without consent, shall die or be removed before the commencement of a suit for dissolving such marriage, &c. pursuant to this and the former act, such person as shall after become guardian, or such person as shall be appointed by the chancellor for the purpose, may commence and prosecute a suit for annulling such marriage, &c. as herein and in said former act is directed; and in case after the commencement of any suit pursuant to this or the former act, the father, guardian, or person appointed to commence and prosecute such suit, shall die, or be removed, before the same be finally determined, such suit shall not abate, but shall be carried on in the name of such person as shall be appointed guardian to such infant, or who shall be appointed by the chancellor to carry on the same, in like manner as it might have been carried on by the person who commenced such suit.

*Marriages of
lunaticks void.*
15 Geo. 2. c. 30.
Eng.

With respect to the incapacity to marry arising from the want of reason, the 15 Geo. 2. c. 30. Eng. enacts, that in case any person who shall be found a lunatick, by any inquisition taken by virtue of a commission under the great seal of Great Britain; or any lunatick, or person under a phrensy, whose person and estate by virtue of any act of parliament shall be committed to the care of trustees, shall marry before he or she shall be declared of sane mind by the lord chancellor, or by such trustees or the major part of them, every such marriage shall be void to all intents. No statute in Ireland has provided in

in a similar way, for preventing lunaticks from being surprised into unsuitable marriages.

The forms required to be observed by the 26 Geo. 2. *Publication of banns required.*
 c. 33. Eng. in order to give validity to marriages, are (by 26 Geo. 2. c. 33.
 s. 1.) that all banns of matrimony shall be published in an s. 1. Eng.
 audible manner in the parish church, or in some public chapel, (in which banns have been usually published,) belonging to the parish or chapelry where the persons to be married shall dwell, according to the form of words prescribed by the rubrick prefixed to the office of matrimony in the book of common prayer, upon 3 Sundays preceding the solemnization of the marriage, during the time of morning service, or of evening service, (if there be no morning service upon any of those Sundays) immediately after the second lesson: and if the persons to be married shall dwell in divers parishes, &c. the banns shall be in like manner published in the church, &c. belonging to such parish, &c. wherein each of the said persons shall dwell; and where both or either of the persons shall dwell in any extraparochial place, (having no church, &c. wherein banns have been usually published,) then the banns shall be published in some parish church, &c. adjoining such place: and where banns shall be published in any church, &c. belonging to any parish adjoining to any extraparochial place, the parson, vicar, minister, or curate, publishing such banns, shall certify in writing under his hand the publication thereof. And all other rules prescribed by the said rubrick concerning the publication of banns and solemnization of matrimony, not hereby altered, shall be observed: and in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches, &c. where such banns have been published, and in no other place. But by s. 2. no parson, &c. shall be obliged to publish s. 2.
 the banns, unless the persons to be married shall 7 days before the time required for the first publication, deliver *Previous notice to parson, &c.*
 to such parson, &c. a notice in writing of their true christian and surnames, and of the house or houses of their respective abodes within such parish, &c. and of the time during which they have dwelt, inhabited, or lodged in such house or houses. And by s. 3. no parson, s. 3.
 &c.

&c. solemnizing marriages, &c. between persons, both or one of whom shall be under the age of 21 years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, unless such parson, &c. shall have notice of the dissent of such parents, &c.; and in case such parents, &c. or one of them, shall openly and publicly declare in the church, &c. where such banns shall be so published, his dissent to such marriage, such publication of banns shall be void. By s. 4. no license shall be granted by any archbishop, bishop, or other ordinary or person, to solemnize any marriage in any other church, &c. than in the parish church, &c. of the parish, &c. within which the usual place of abode of one of the persons to be married shall have been for 4 weeks immediately before granting such license; or where both or either of the parties shall dwell in any extraparochial place, having no church or chapel wherein banns have been usually published, then in the parish church, &c. of some adjoining parish, &c. And by s. 5. all parishes where there shall be no parish church, &c. belonging thereto, or none wherein divine service shall be usually celebrated every Sunday, shall be deemed extraparochial places for the purposes of this act. By s. 6. the right of the archbishop of Canterbury and his officers, to grant special licenses to marry at any convenient time or place, by virtue of the 25 Hen. 8. c. 21. Eng. is saved and reserved: but by s. 7. no surrogate deputed by any ecclesiastical judge, who hath power to grant licenses of marriage, shall grant any such license, before he hath taken an oath before said judge faithfully to execute his office, according to law, to the best of his knowledge, and hath given bond in £100. to the bishop of the diocess, for the due and faithful execution of his office. And by s. 8. all marriages solemnized in any other place than a church or such public chapel, unless by special license as aforesaid, or that shall be solemnized without publication of banns, or license from a person having authority to grant the same first had, shall be void.* But by s. 10.

s. 4.

*Marriages to be
in the parish
church, &c.*

s. 5.

s. 6.

*Special licenses
excepted.*

s. 7.

s. 8.

*Marriages con-
trary to this act
void.*

* The provision, making it felony to celebrate such marriages, will be stated in another place.

after the solemnization of any marriage, under a publication of banns, it shall not be necessary in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes, &c. wherein the banns were published; or where the marriage is by license, it shall not be necessary to give any proof that the usual place of abode of one of the parties for the space of 4 weeks as aforesaid, was in the parish, &c. where the marriage was solemnized; nor shall any evidence be received in either of said cases to prove the contrary, in any suit touching the validity of such marriage. By s. 14. & 15. s. 14. & 15.

the church-wardens and chapel-wardens of every parish or chapelry are required to provide books of vellum or durable paper, in which all marriages and banns, there published and solemnized, shall be registered, in a particular manner and form hereby prescribed. And by s. 15. all marriages shall be solemnized in the presence of 2 or more witnesses, beside the minister who shall celebrate the same; and immediately after, an entry thereof shall be made in such registry, in which it shall be expressed that said marriage was celebrated by banns, or license, and, if both or either of the parties married by license be under age, with the consent of the parents or guardians, as the case shall be; and shall be signed by the minister with his proper addition, and also by the parties married, and attested by 2 witnesses present at the solemnization of such marriage. By s. 17. this act shall not extend to the marriages of any of the royal family; nor (by s. 18.) to Scotland; nor to any marriages amongst quakers, or amongst persons professing the jewish religion, where both the parties are quakers or jews; nor to any marriages solemnized beyond the seas. By s. 19. this act is to be publicly read in all parish churches, and public chapels, by the parson, &c. on 4 Sundays in each year, viz.: the Sundays next before the 25th March, 24th June, 29th September, and 25th December.*

s. 10.

Marriages to be registered.

s. 17.

Exceptions.

s. 18.

s. 19.

Act to be read 4 times in every year.

This

* The 21 Geo. 3. c. 53. Eng. 44 Geo. 3. c. 77. E. and 48 Geo. 3. c. 127. F. have rendered valid marriages solemnized before 23d August, 1808, in certain churches and chapels, in which banns had not been usually published before or at the time of passing the 26 Geo. 2. c. 33.

*Restraints upon
marriages in
Ireland of pro-
testants and ca-
tholics.*

This Marriage Act has never been adopted in Ireland: but the policy of the Irish statutes has been not only as the 9 Geo. 2. c. 11. Ir. professes, to prevent the clandestine marriages of persons entitled to considerable fortunes, but also to prevent the popish interest and religion from being increased and propagated by intermarriages between protestants and catholics. The 9 W. 3. c. 3. Ir. 2 Ann. c. 6. s. 5. Ir. and 9 Geo. 2. c. 11. s. 6. Ir. were framed with this latter view; and accordingly subjected such protestants as should marry papists, and the ministers celebrating such marriages, to divers penalties and disabilities: but these statutes were so far repealed by the 32 Geo. 3. c. 21. Ir. which enacts (s. 12. & 13.) that it shall be lawful for protestants and persons professing the Roman catholic religion to intermarry, and for all persons having lawful jurisdiction, to grant licenses for marriages to be celebrated between protestants and catholics, and for clergymen of the established church, or protestant dissenting ministers, to publish the banns of marriages between such persons: provided however that neither protestant dissenting ministers, nor popish priests, shall celebrate marriages between protestants of the established church and Roman catholics. The 19 Geo. 2. c. 13. s. 1. Ir. also provided, that every marriage between a papist, and any person who hath been or hath professed himself to be a protestant at any time within 12 months before celebration of marriage, or between two protestants, if celebrated by a popish priest, shall be void without any process, judgment, or sentence of law. And it is also a proviso (s. 12.) of the 33 Geo. 3. c. 21. Ir. which relieves catholics from all penalties and disabilities in general, save such as protestants are liable to, (but with certain exceptions,) that nothing herein shall authorize any popish priest, or reputed popish priest, to celebrate marriage between protestant and protestant; or between any person who hath been or professed himself to be a protestant at any time within 12 months before such marriage, and a papist, unless such protestant and papist shall have been first married by a clergyman of the protestant religion; and every popish priest, or reputed popish priest, who shall celebrate any marriage contrary to this provision, shall forfeit

forfeit £500. to his majesty, upon conviction thereof. The 11 Geo. 2. c. 10. s. 3. Ir. recites that several protestants dissenting from the church of Ireland, scruple to be married according to the form of matrimony prescribed by said church; and enacts, that such dissenters who shall enter into matrimonial contracts in their own congregation before their ministers or teachers, and thereupon live together as husband and wife, shall not be prosecuted in any ecclesiastical court *ex officio mero*, or on the presentment of any minister or church-wardens of any parish, for or by reason of their entering into such matrimonial contracts, or for their living together as husband and wife by virtue of such contract; provided such dissenters, and such minister or teacher, shall take the oaths, and subscribe the declaration, according to the 6 Geo. 1. c. 5. Ir. which will be stated in another place. And by the 21 & 22 Geo. 3. c. 25. Ir. all matrimonial contracts and marriages between protestant dissenters, and solemnized by dissenting ministers or teachers, shall be valid to all intents; and all parties to such marriages, and all persons deriving under them, shall in virtue of such marriages be entitled to all rights and benefits, in like manner as persons of the established church, and as if the same had been solemnized by a clergyman of the church of Ireland: provided that nothing herein shall make void, or be construed contrary to, the several acts made in the reigns of George I. and George II. for preventing clandestine and other marriages therein specified.

11 Geo. 2. c. 10.
s. 3. Ir.

*Dissenters may
marry according
to the forms of
their church.*

21 & 22 Geo. 3.
c. 25. s. 1. & 2. Ir.

No Toleration Act, or statute for the relief of non-conformists, has dispensed with the Marriage Act in favour of the dissenters of England: and the 31 Geo. 3. c. 32. Eng. which relieves Roman catholics from certain penalties and disabilities, to which they were before subject in England, expressly provides (s. 12.) that nothing therein shall be construed to repeal any part of the Marriage Act, or any other statutes concerning marriages.

*Law less relaxed
in England.*
31 Geo. 3. c. 32.
s. 12. Eng.

The 2 & 3 Edw. 6. c. 21. Eng. recites, that "although it were not only better for the estimation of priests, and other ministers in the church of God, to live chaste, sole and separate from the company of women, and the bond

*Marriages of
priests, &c law-
ful.*

2 & 3 Edw. 6.
c. 21. Eng.

of

of marriage, but also thereby they might the better intend to the administration of the Gospel, and be less intricate and troubled with the charge of household, being free and unburdened from the care and cost of finding wife and children; and that it were most to be wished, that they would willingly, and of themselves, endeavour themselves to a perpetual chastity, and abstinence from the use of women; yet forasmuch as the contrary hath rather been seen, and such uncleanness of living, and other great inconveniences, not meet to be rehearsed, have followed of compelled chastity, and of such laws as have prohibited those the godly use of marriage; it were better and rather to be suffered in the commonwealth, that those which could not contain, should, after the counsel of scripture, live in holy marriage, than feignedly abuse, with worse enormity, outward chastity or single life."

5 & 6 Edw. 6.
c. 12. Eng.

And accordingly enacts, that all laws, canons, constitutions, and ordinances, which prohibit marriage to any ecclesiastical person, shall be void. And the 5 & 6 Edw. 6. c. 12. Eng. further declares, that the marriages of priests, and other ecclesiastical persons, shall be good to all intents, and their children legitimate, and inheritable; and such priests, &c. may be tenants by the curtesy of their wives' lands, &c.; and their wives have dower of their lands, &c. as any other husbands and wives. It is to be observed, that by the 31 Hen. 8. c. 14. Eng. it was made a felony, for a priest to keep company with a wife; and highly penal also, to keep company with a concubine: but this statute was altered by the 32 Hen. 8. c. 10. Eng. and afterwards repealed by the 2 & 3 Edw. 6. c. 21. Eng. The 32 Hen. 8. c. 10. Eng. which mitigated the penalties of the 31 Hen. 8. c. 14. Eng. has been only so far repealed, by the 2 & 3 Edw. 6. c. 21. *supra*, as respects the marriages of priests; but still continues in force with respect to concubinage. No statute has been made in Ireland respecting the marriage, or concubinage, of priests or other ecclesiastical persons: but by one of the 39 articles (which are recognized by the 17 & 18 Car. 2. c. 6. Ir.) it is declared to be lawful for them, as for all other christian men, to marry at their own discretion.

CHAP.

CHAP. XVI.

Of Parent and Child.

THE 43 Eliz. c. 2. Eng. enforces the reciprocal duty § 1.
of parents to their children, and of children to their pa- *Parent and child*
rents, in respect to maintenance. By this statute (s. 7.) *—reciprocal*
the father and grandfather, and the mother and grand- *duty of main-*
mother, and the children of every poor, old, blind, lame, *tenance.*
and impotent person, or other poor person not able to *43 Eliz. c. 2.*
work, being of sufficient ability, shall, at their own *Eng.*
charges, relieve and maintain every poor person, in that
manner, and according to that rate, as by the justices of
peace of the county where such sufficient persons shall
dwell, at their general quarter sessions shall be assessed;
upon pain of forfeiting 20s. for every month that they
shall fail therein. And by the 5 Geo. 1. c. 8. s. 1. Eng. *5 Geo. 1. c. 8.*
the church-wardens or overseers of the poor of any parish *s. 1. Eng.*
or place, where any (wife or) child shall be left a charge *Duty enforced.*
upon such parish, &c. may by the warrant of any 2 jus-
tices of the peace, seize so much of the goods and chat-
tels, and receive so much of the annual rents and profits
of the lands, &c. of the (husband,) father or mother, so
leaving them chargeable, as such justices shall direct,
towards the discharge of such parish, &c. for the bring-
ing up and providing for such (wife or) child. The 11 & 12
Geo. 3. c. 15. Ir. (amended by the 13 & 14 Geo. 3. c. 24. Ir.)
has been already stated,* which provides for deserted in- ** Ante page 282*
fants: but no Irish statute contains any provisions similar
to those of the 43 Eliz. c. 2. or 5 Geo. 1. c. 8. “To the
end that the protestant children of popish parents may
not in the life-times of such their parents, for want of
fitting maintenance be necessitated, in compliance with
their parents, to embrace the popish religion contrary to
their own inclinations;” the 11 & 12 W. 3. c. 5. s. 7. Eng. *11 & 12 W. 3.*
provides, that if any such parent, in order to the compel- *c. 5. s. 7. Eng.*
ling such his protestant child to change his religion, shall
refuse

Chancellor may
order mainte-
nance in certain
cases.

1 Ann. st. 1.
c. 30. Eng.

2 Ann. c. 6. s. 3.
Ir.

8 Ann. c. 3.
s. 3. & 4. Ir.

17 & 18 Geo. 3.
c. 49. s. 5. Ir.

refuse to allow such child a fitting maintenance, suitable to the degree and ability of such parent, and to the age and education of such child, then it shall be lawful for the lord chancellor, upon complaint thereof, to make order therein. And the 1 Ann. st. 1. c. 30. Eng. in like manner enables the chancellor, to order a suitable maintenance for the protestant children of Jewish parents. It was also a provision of the 2 Ann. c. 6. s. 3. Ir. and 8 Ann. c. 3. s. 3. & 4. Ir. that upon complaint in chancery, by bill founded on these acts, against any popish parent, it should be lawful for said court, to oblige the popish parent to discover upon oath the full value of his estate, as well real as personal, clear above all real debts and incumbrances contracted, *bona fide*, before the inrolment of the certificate of conformity of any protestant children of such parent; and to order a distribution of such estate, not exceeding 1-3*d.* part thereof, for the present support, and future maintenance and portions of such children, notwithstanding any fraudulent gift or sale, or voluntary disposition, charge, or incumbrance; and upon any new bill preferred, to augment such portion and maintenance, according to the true and improved value of the estate, notwithstanding any decree previously made up and inrolled. But the 17 & 18 Geo. 3. c. 49. Ir. which enabled papists to take leases for years not exceeding 999, or for any term of years determinable upon any number of lives not exceeding 5, did by s. 5. provide, that no maintenance or portion should be granted upon a bill filed pursuant to the 2 Ann. c. 6. out of the personal property of any such popish parent, except out of such leases as they were enabled to take under this act. And the 33 Geo. 3. c. 21. s. 1. & 14. Ir. has rendered these clauses of the 2 Ann. c. 6. and 8 Ann. c. 3. inoperative, as to such Roman catholics as shall take and subscribe the oaths and declaration contained in this act, and in the 13 & 14 Geo. 3. c. 35. Ir.*

§ 2. II. As to the duty of giving children an education suitable to their station in life. The statutes for apprenticing poor children have been already stated in a former chapter: and those statutes which restrain the sending children abroad to be educated in the popish religion are referred

Maintenance of
bastards.

to

to a subsequent part of this Work, which relates to offences against God and religion. But with respect to the duty of parents to their bastard children: By the 18 Eliz. c. 3. s. 2. Eng. two justices of the peace (one ^{18 Eliz. c. 3. s. 2. Eng.} to be of the *quorum*) in or next to the church of the parish within which any bastard shall be born, shall take order (as well for the punishment of the mother, and reputed father of such bastard child, as also) for the better relief of such parish, and for the keeping of such bastard, by charging such mother or reputed father with the payment of money weekly, or other sustentation, for the relief of such child: and if after such order shall be subscribed by them under their hands, the mother or reputed father, upon notice thereof, shall not observe and perform the said order, such party shall be committed to gaol; except he or she shall put in sufficient surety to perform said order, or else personally to appear at the next general sessions for that county, and to abide such order as the justices shall then and there take, or if no other order be there made, then to abide and perform the order made as aforesaid.

And by the 13 & 14 Car. 2. c. 12. s. 19. Eng. the church-wardens and overseers for the poor of said parish where ^{13 & 14 Car. 2. c. 2. s. 19. Eng.} any bastard child shall be born, may take and seize so much of the goods and chattels, and receive so much of the annual rents or profits of the lands, of the putative father or lewd mother of any bastard, as shall be ordered by any 2 justices of peace, towards the discharge of the parish, to be confirmed at the sessions, for the bringing up and providing for such bastard child. By the 6 Geo. 2. ^{6 Geo. 2. c. 31. s. 1. Eng.} c. 31. Eng. (which amends the 18 Eliz. c. 3. Eng. 7 Jac. 1. c. 4. Eng. and 3 Car. 1. c. 4. Eng.) if any single woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable, to any parish or extraparochial place, or shall declare herself to be with child, and that such child is likely to be born a bastard and to become chargeable, &c. and shall in either of such cases, in an examination taken in writing, upon oath before a justice of peace of the county, &c. where such parish, &c. shall lie, charge any person with having gotten her with child, such justice may upon the application of the overseers of the poor of such parish, or
any

any one of them, or of any substantial householder of such extraparochial place, issue his warrant for apprehending and bringing such person so charged before him or any of the justices of such county, &c.; and such justice shall commit him to the common gaol or house of correction of such county, &c., unless he shall give security to indemnify such parish, &c., or shall enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions or general sessions for such county, &c. and to abide and perform such order as shall be made in pursuance of the 18 Eliz.

s. 2.

c. 3. But by s. 2. if the woman so charging any person shall die, or be married before she be delivered, or if she shall miscarry, or shall appear not to have been with child at the time of her examination, then such person shall be discharged from his recognizance, at the next general quarter sessions, or general sessions for such county, &c. or be immediately released out of custody by warrant of any justice residing in or near such parish, &c.

s. 3.

And by s. 3. upon the application of any person so committed to gaol, &c. or of any person on his behalf, to any justice residing near such parish, &c. such justice shall summon the overseers of the poor of such parish, or one or more of the substantial house-holders of such extraparochial place, to shew cause why such person should not be discharged; and if no order shall have been made in pursuance of the 18 Eliz. c. 3., within 6 weeks after such woman shall have been delivered, such

s. 4.

justice may discharge him. And it is provided (s. 4.) that no justice shall send for any woman before she shall be delivered, and one month after, in order to her being examined concerning her pregnancy; nor compel any woman, before she shall be delivered, to answer any questions relating to her pregnancy. The law of Ireland is only so far analagous, as it provides for the support of poor exposed infants or foundlings, as already stated, page 286.

*Settlen. en' of
bastard.*

17 Geo. 2. c. 5.
s. 25. Eng.

In order to ascertain the place of settlement of bastards, the 17 Geo. 2. c. 5. s. 25. Eng. provides, that where any woman wandering and begging shall be delivered of

of a child, in any parish or place to which she doth not belong, and become chargeable, the church-wardens or overseers of the poor of such parish, may detain her till they can safely convey her to a justice of peace, who shall commit her to the house of correction till the next general or quarter sessions, who may order her to be publicly whipt, and detained in the house of correction for any time not exceeding 6 months; and upon application by the church-wardens or overseers of the place where she was so delivered, the justices at such sessions shall order the treasurer of the county, or district, to pay them such sum as shall be a reasonable satisfaction for the charges such place has been put to on such woman's account; and if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither by a vagrant pass, by virtue of this act, but the settlement of such woman shall be deemed the settlement of such child. It is also provided by the 13 Geo. 3. c. 82. s. 5. Eng. that no bastard child, ^{13 Geo. 3. c. 82 s. 5. Eng.} born in any hospital licensed for the public reception of pregnant women pursuant to this act, shall be legally settled in, or be entitled to any relief as a parishioner from, the parish wherein such hospital shall be situated; but every such child shall follow the mother's settlement, and shall immediately gain a settlement in the parish where the mother was last legally settled. And by the 20 Geo. 3. ^{20 Geo. 3. c. 36. s. 2. Eng.} c. 36. s. 2. Eng. all bastard children born in the house of industry within any incorporated hundred or district, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled. These several statutes are peculiar to England: and indeed the entire system of Poor-laws in England, and in particular in respect to parochial settlements, is so peculiar, that scarce any analogy can be traced in the Irish statutes.

CHAP. XVII.

Of Guardian and Ward.

§ 1.
Guardianship in
chivalry abolish-
ed.

12 Car. 2. c. 24.
s. 8. Eng.

Guardians by
statute, or testa-
mentary guar-
dians.

s. 9.

THE *Statutum Hiberniæ de coheredibus*, 14 Hen. 3. is printed as a public act in the English Statute Book, next in order to the Great Charter and Charter of the Forest; though it has been doubted whether it is properly to be considered as a statute. It is in form an instruction to the king's justices in Ireland, directing them how to proceed in a certain point, viz. as to the right of the eldest sister to the homage of her younger sisters being co-heiresses; which right was thereby declared to be in the king or lord of the fee; for, to give the eldest sister the wardship of her younger sisters, or their heirs, would be, *quasi committere agnum lupo devorandum*. Upon the abolition of tenures *in capite* and by knight service, and of guardianship in chivalry as incident thereto, by the 12 Car. 2. c. 24. Eng., it was provided by this statute (s. 8.) that where any person shall have any child under the age of 21 years, and not married at the time of his death, it shall be lawful for the father of such child, whether born at the time of the decease of the father, or at that time *in ventre sa mere*, or whether the father be within the age of 21 years, or of full age, by his deed executed in his life time, or by his last will and testament in writing, in the presence of 2 or more witnesses, in such manner, and from time to time, as he shall think fit, to dispose of the custody and tuition of such child, while it shall be under the age of 21, or for any lesser time, to any person in possession or remainder, [*other than popish recusants]; and such disposition shall be good against every person claiming the custody, &c. of such child, as guardian in socage or otherwise. And by s. 9. such

* "Other than persons not of the communion of the church of England," in the 14 & 15 Car. 2. c. 19. Ir.

such person to whom the custody of such child shall be so disposed or devised, shall and may take into his custody to the use of such child, the profits of all lands &c. of such child, and also its personal estate, till its age of 21 years, or any lesser time, according to such disposition, and may bring such action in relation thereto, as a guardian in common socage might do. The 14 & 15 Car. 2. c. 19. Ir. 14 & 15 Car. 2. c. 19. s. 6. & 7. Ir. contains corresponding clauses (s. 6. & 7.) with such deviation only as is noted in the margin of the preceding page. Papists were further disabled from being guardians even to the children of papists by the 2 Ann. c. 6. Ir.: but by the 21 & 22 Geo. 3. c. 62. s. 5. Ir. persons professing the popish religion, having taken and subscribed the oath and declaration in the 13 & 14 Geo. 3. c. 35. Ir. (except ecclesiasticks,) were enabled to have the guardianship of their own children, or of the children of other papists: and the 9 W. 3. c. 3. Ir., which also disabled Protestants married to papists, from being guardians to any persons, was repealed by the 32 Geo. 3. c. 21. s. 9. Ir. The 30 Geo. 3. c. 29. Ir. recites, that doubts had arisen whether by the 14 & 15 Car. 2. c. 19. Ir. dissenters from the established church may in certain cases appoint, or be appointed, guardians of infants; and also whether by the 21 & 22 Geo. 3. c. 62. Ir. persons professing the popish religion, may by deed or will appoint guardians of their children; and for removing such doubts enacts, that any person being a protestant, the father of a child under the age of 21 years and not married at the death of such father, may by deed executed in his life time, or by his last will and testament in writing, in the presence of two or more witnesses, dispose of the custody and tuition of such child; while under the age of 21, or for any lesser time, to any person, other than to persons professing the popish religion; and any person professing the popish religion, who shall not have lapsed from the protestant religion, the father of a child under the age of 21, may dispose of the custody of such child to any other person than to an ecclesiastick of the church of Rome. But by s. 2. no person professing the popish religion, shall be capable of being the guardian of a child of a

14 & 15 Car. 2.
c. 19. s. 6. & 7. Ir.

21 & 22 Geo. 3.
c. 62. s. 5. Ir.

30 Geo. 3. c. 29.
Ir.

Dissenters may
appoint or be ap-
pointed guardi-
ans.

And catholics,
under certain
restrictions.

papist, who shall not have taken the oath of allegiance and declaration prescribed by the 13 & 14 Geo. 3. c. 35. Ir.* It seems to be questionable whether the 33 Geo. 3. c. 21. s. 1. Ir. which has been already so often referred to, and which enacts that papists, &c. shall not be subject to any disabilities or incapacities, save such as protestants are subject to, (with such exceptions and upon such conditions as therein mentioned), has not placed popish ecclesiasticks upon the same footing with protestant ecclesiasticks, in respect to guardianship; and enabled papists, &c. whether ecclesiastical or lay, to be guardians to the children of protestants as well as catholics.

*Vide Chap. 10.

CHAP. XVIII.

Of Corporations.

§ 1.

Corporations—
how created.

39 Eliz. c. 5.
Eng.

THE mode of creating Corporations, as well as their powers, capacities, and incapacities, may be collected from the 39 Eliz. c. 5. Eng. which recites, that provision had been made by the 35 Eliz. c. 7. s. 27. Eng. enabling persons for a certain time to grant lands, &c. as well to the use of the poor, as for the maintenance of houses of correction or abiding-houses, but that said law had not taken effect, by reason that no person could incorporate any hospital, house of correction, or abiding place, but her majesty, or by her special license, by letters patent under the great seal; in order therefore to promote the success of such good
and

and charitable works, and that without suit to her majesty, and with as great ease and as little charge as may be, this statute enables all persons seised of estates in fee simple, (except persons within age, women covert, or of non-sane memory,) by deed inrolled in the court of chancery, to erect hospitals, *maisons de Dieu*, abiding-places, or houses of correction, as well for the relief of the maimed, poor, or impotent people, as to set the poor to work; which hospitals, &c. shall be incorporated by such name as the founder his heirs &c. shall appoint by such deed, and shall have perpetual succession; and shall have capacity to take to them and to their successors for ever, as well goods and chattels, as lands, &c. being freehold, so that the same exceed not the yearly value of £200. above all charges, without license or writ of *ad quod damnum*, and notwithstanding any statute of *mortmain*; and shall by such name of incorporation sue and be sued, implead and be impleaded; and shall have such common seal as by said founder or his heirs, &c. by writing under hand and seal shall be appointed; and shall be ordered, directed, and visited by such person, or body, as shall be so nominated or assigned by such founder, his heirs or assigns, according to such rules, statutes, and ordinances as shall be made by said founder, &c. in writing under hand and seal, not being repugnant to the laws and statutes of the realm. But by s. 4. such Hospitals &c. must be endowed with lands &c. to the yearly value of £10. And this statute (s. 2.) disabled such corporations from making any leases or other conveyances of their estates, other than leases, &c. not exceeding 21 years, in possession, and reserving the accustomed yearly rent which was payable for the greater part of 20 years before. No Irish statute is precisely similar, but the cases are very numerous, in which corporations sole and aggregate, ecclesiastical and lay, civil and eleemosynary, have been created by the immediate acts of the Irish Legislature, without the previous charter of the king;* and many lay corporations have been created

Their incidents.

s. 2.

* *Vide* Ball's Index, Tit. Incorporation, Perpetual Cures, &c.

created in Ireland for the government of towns, by the king's letters patent or charters of incorporation.

§ 2.

The right of making bye-laws restrained.

19 Hen. 7. c. 7. Eng.

II. The right of making bye-laws which is incident to corporations, is restrained by the 19 Hen. 7. c. 7. Eng. which enacts, that no masters, wardens, and fellowships of crafts or mysteries, nor any rulers of guilds or fraternities, shall make or execute any acts or ordinances, in disheritance or diminution of the prerogative of the king, nor against the common profit of the people; but that the same acts, &c. be examined and approved by the chancellor, treasurer of England, or chief justices of either benches, or 3 of them, or before both the justices of assize in their circuit in that shire where such acts, &c. be made; upon pain of forfeiting £40. for every time that they do contrary. And none of said bodies corporate shall make any acts, &c. to restrain any person to sue to the king, or to any of his courts, nor put or execute any penalty or punishment upon them that do sue, upon the like pain of forfeiting £40. The 10 Hen. 7. c. 7. Ir. s. 2. provides, that all acts and laws made within cities, or great towns, contrary to the king's prerogative and jurisdiction royal, shall be void. And by the 33 Hen. 8. c. 27. Eng. every order and statute made by any founder of any hospital, college, deanery, or other corporation, whereby the grant or election of the governor of such hospital, &c. with the assent of the more part of such of the same hospital, &c. as shall have voice of assent to the same, should be hindered by any one or more being the lesser number of such corporation, shall be void; and no person of any such hospital, &c. shall be compelled to take any oath for the observing of any such order, &c. upon pain of every person giving such oath to forfeit £5. one moiety to the king, and the other to any that will sue for the same in any of the king's courts of record by action of debt, &c. To this act there is no corresponding statute in Ireland.

10 Hen. 7. c. 7. s. 2. Ir.

33 Hen. 8. c. 27. Eng.

Acts of majority binding.

§ 3.

Qualification for offices, &c. in corporations.

III. By the 13 Car. 2. st. 2. c. 1. Eng. commonly called the Corporation Act, which is intituled "An act for the well governing and regulating of Corporations," (which is amended

amended by the 5 Geo. 1. c. 6. Eng.) it is provided (s. 12.) that no person shall be placed, elected, or chosen, in or to any office of mayor, alderman, recorder, bailiff, town-clerk, common council-man, or other office of magistracy, place, trust, or employment, concerning the government of any city, corporation, borough, cinque port and their members, or other port-town, that shall not have, within one year next before such election, &c. taken the sacrament of the Lord's supper, according to the rites of the church of England; and every such person shall take the oaths of allegiance and supremacy, at the time when the oath for the due execution of the said places and offices shall be administered; and in default thereof every such election, &c. shall be void. And by s. 13. every person who shall be placed in any corporation by virtue of this act, shall, upon his admission, take the oath or oaths usually taken by the members of such corporation. It was one of the provisions of the Act of Settlement, 14 & 15 Car. 2. c. 2. s. 184-5. Ir. that, "For the better prevention of all future rebellions, and to the end that the good subjects of Ireland might be secured against all insurrections or attempts for the time to come, and that said kingdom should be better planted and improved," the lord lieutenant and council of Ireland should have power to make rules, orders, and directions, for the better regulation of cities, walled towns, and corporations, and the electing of magistrates and officers there: which power was by the Act of Explanation, 17 & 18 Car. 2. c. 2. s. 82. Ir. declared to extend to all cities, &c. as well new as old, and the time for that purpose enlarged. And accordingly in pursuance of these acts, distinct rules, &c. were made and established by the lord lieutenant and council in the year 1672,* for the better regulating several corporations by name, and the electing of magistrates and officers therein; and certain rules, orders, and directions, were then also made and established for such other cities, walled-towns, and corporations, for which no particular rules had been then made. One of these rules so established is, that no person shall be elected to be mayor, recorder, sheriff, treasurer, alderman, town-clerk, common council-man, or such like officer, or to be

13 Car. 2. st. 2.
c. 1. s. 12. Eng.
(5 Geo. 1. c. 6.
Eng.)

s. 13.

Proviso.

14 & 15 Car. 2.
c. 2. s. 184-5. Ir.

*New rules for
government of
corporations in
Ireland.*

17 & 18 Car. 2.
c. 2. s. 82. Ir.

* *Vide Irish
statutes vol. 3.
p. 205. to 239.*

*

master,

master or warden of any corporation or guild, or be capable of holding such offices or places, until he shall have taken the oaths of supremacy and allegiance, before such person as shall admit him to such office, &c.; and in default thereof every such election, &c. shall be void: but a power is thereby given to the lord lieutenant for the time being to dispense with taking the oath of supremacy, in favour of such persons as he shall name by writing under his hand: and it is to be observed that the taking the sacrament according to the rites of the church of England, is not a qualification prescribed by these new rules. The 33 Geo. 3. c. 21. Ir. which removes the disabilities of catholics, (with certain exceptions) provides, (s. 9.) as already stated (p. 304.) that nothing herein shall enable any person to hold any office contrary to the new rules (*ante* p. 423), unless he shall have taken, made, and subscribed the oaths and declaration, and performed the several requisites, which by any law heretofore made, and now in force, are required to enable him to hold such office. The oath called "the little oath," which was also required to be taken as a qualification for corporate offices, was abolished in England by the 5 Geo. 1. c. 6. Eng. and in Ireland by the 4 Geo. 1. c. 3. Ir. The 10 Hen. 7. c. 7. s. 1. Ir. enacts, that no city or great town shall admit any person to be alderman, juror, or freeman, but such as have been prentices, or continually inhabiting within said cities, &c.; nor call any person to their councils but only their recorder and learned counsel; nor elect any person to be mayor or head officer, but such as shall be known to be the king's true men, bearing a sad true mind to the common weal, upon pain of forfeiting 100 marks to the king.

By several statutes made in England, 1 Ric. 3. c. 9. 14 & 15 Hen. 8. c. 2. 21 Hen. 8. c. 16. and 32 Hen. 8. c. 16. alien artificers were prohibited to work for themselves, or to take or keep houses or shops; but these statutes are conceived to be obsolete, or indirectly repealed.* But in Ireland the new rules for the government of corporations, which have been referred to in the preceding page, have directly enfranchised them by providing, that all foreigners,

* 1 Black. Com. p. 372.

Aliens enfranchised in Ireland by new rules.

14 & 15 Car. 2. c. 2. Ir.

17 & 18 Car. 2. c. 2. Ir.

reigners, strangers, and aliens, as well others as protestants, who shall be merchants, traders, artizans, artificers, seamen, or otherwise skilled in any mystery, craft, or trade, or in the working or making any manufacture, or the art of navigation, who shall come into any city, walled town, or corporation, with intent to inhabit, reside and dwell, shall upon payment or tender of 20s. by way of fine to the chief magistrate and common council, or other persons authorized to admit and make freemen, be admitted free of such city, &c. and of all or any guild, brotherhood, society or fellowship of any trade, &c. within the same, during their residence for the most part, and their families constant inhabiting within this kingdom; and shall enjoy all privileges and immunities of trading, buying, working, and selling, as amply as any freeman of such city, &c.; and every person who shall be so admitted free shall be deemed a denizen: provided that such strangers shall take the oath of allegiance, and such other oaths as are accustomably taken by freemen, or other members of such corporations; and also pay the like charges as other freemen of the like trade, craft, or mystery. And any chief magistrate or other person refusing so to admit any such stranger to his freedom, being authorized so to do, shall be disfranchised by the lord lieutenant and council, and be incapable of being a freeman or member of any city, &c.; and every such stranger shall, upon tender of the fine of 20s. as aforesaid, and upon taking the oath of allegiance before the next justice of peace, be deemed a freeman. And any person interrupting any such stranger in his trading, &c. as aforesaid, shall be also disfranchised by the lord lieutenant and council, and be incapable of being a freeman or member of any such city, &c. The 14 & 15 Car. 2. c. 13. Ir. 14 & 15 Car. 2. c. 13. Ir. contained similar provisions in respect to aliens, and subjects of the protestant religion, who should come with their families to reside in any city or corporate town; but by this act the penalty for refusing such persons admission to their freedom is £100.; and the penalty for any interruption or disturbance to such traders, &c. is £20. The statutes passed for the naturalization of such aliens as

as shall come and reside in Ireland, have been stated in another place; and it has been already observed,* that an exemption from executing corporation offices for 7 years is one of the privileges granted by the 19 & 20 Geo. 3. c. 29. s. 4. Ir. to such aliens as shall become naturalized pursuant to this act.

Qualification for voting at elections of magistrates.

21 & 22 Geo. 3. c. 21. s. 2. 13. & 17. Ir.

s. 3.

1 Geo. 2. c. 9. s. 7. Ir.

33 Geo. 3. c. 21. s. 2. & 9. Ir.

By the 21 & 22 Geo. 3. c. 21. s. 2. 13. & 17. Ir. no person claiming to vote, as a protestant inhabitant of any borough where the right of voting is vested in the protestant inhabitants in general, or protestant inhabitants and others, at the election of any chief magistrate, burgess, or freeman, shall vote at such election, unless he shall be registered at some quarter sessions of the county where such borough lieth, or at some adjournment thereof, 12 months before such election, by taking the following oath, in open court, before the justices at such sessions, &c.:—"I, *A. B.* do swear, (*or if a quaker do affirm,*) "that I am a resident inhabitant of the borough of—— "in the county of ——, and that my house is situated "in ——, (*here naming the street, lane, alley, row, or place,*) and that my neighbours are ——, and ——, "and that I am not an inmate or lodger with any other "person in said borough, but am really and truly a resident inhabitant of and housekeeper in the said borough, "and am answerable for payment of the usual customary "taxes and cesses in said borough, as a resident householder therein, which shall or may be legally demanded "of me; and that I am not a papist, nor married to a "papist, and do not educate, or suffer to be educated, "any of my children under the age of 14 years in the "popish religion. And by s. 3. if a convert from the popish religion shall come to be registered, instead of these words "not married to a papist," there shall be inserted in the oath the following words, "nor have I since my conformity to the protestant religion married any papist now living." By the 1 Geo. 2. c. 9. s. 7. Ir. papists, though not convict, were disabled from voting at the election of any magistrate in any city, or other town corporate: but this disability of catholics, amongst others, was in effect done away by the 33 Geo. 3. c. 21. Ir. (so often referred to) which however provides (s. 2.) that papists,

pists, &c. who claim to have a right of voting for magistrates in any city, town corporate, or borough, shall perform all qualifications, registries, and other requisites which are now required of protestant subjects, save such oaths, and parts of oaths, as import to deny that the person taking the same is a papist, or married to a papist, or educates his children in the popish religion. By 1 Geo. 2. c. 9. s. 9. & 10. Ir. when any alderman, burgess, or common council-man in any corporation, where by the charter or usage no day or time is appointed for the election of such alderman, &c. shall die, or be removed, or resign such office, the chief magistrate shall proceed to a new election of an alderman, &c. within 31 days after notice of the death, removal, or resignation of such alderman, &c. and give 8 days notice in writing, to be posted up in the most public place of such corporation, of the day, time and place of such election; and if such election shall not take place within said 31 days, then such notice shall be so posted up 16 days preceding the day of such election; and any chief magistrate who shall offend here shall forfeit £100. to the informer or prosecutor, with full costs, to be recovered by action of debt, &c. in a court of record at Dublin. But by s. 11. every action, grounded upon this act, shall be commenced within a year &c.

Conditional qualification of Catholics.

Geo. 2. c. 9. s. 9. & 10. Ir.

Notice of elections required

s. 11.

IV. The statutes which respect the capacity of corporations to purchase lands, as well as those which restrict certain corporations from aliening their possessions, reserved for another place. But the right of the four of eleemosynary corporations, to visit, inquire into, correct their irregularities, is an incident belonging to corporations, which has been the object of certain statutes which are proper to be here referred to. It was ordained by the 2 Hen. 5. st. 1. c. 1. E. & I. that as to hospitals which are of the patronage and foundation of the, the ordinaries, by virtue of the king's commissions, inquire of the manner and foundation of said hospitals, and of the governance and estate of the same, for all other matters requisite in this behalf; and the commissions thereof taken shall certify into chancery. As to other hospitals which be of another foundation.

§ 4.

How Corporations are to be visited.

2 Hen. 5. st. 1. c. 1. E. & I.

than of the king, the ordinaries shall inquire of the manner of their foundation, estate, and governance, and of all other necessary matters; and make correction and reformation thereof, according to the laws of holy church, as to them belongeth. But it was one of the provisions of the 14 Eliz. c. 5. Eng. that the bishop should visit such hospitals only, where no visitor was appointed by the founders thereof. And the 39 Eliz. c. 5. Eng. has been already stated, which provided that the hospitals founded by virtue of this statute, should be visited by such persons as should be nominated by the respective founders. It is one of the provisions of the 25 Hen. 8. c. 21. Eng. that the visitation of the monasteries, abbeyes, priories, colleges, hospitals, and other religious houses, and places, which were exempt before the making of this act, shall be had by the king, by commission under the great seal, directed to such persons in such places exempt as shall be appointed for the same. And this clause (s. 20.) was cited and adopted by the 28 Hen. 8. c. 19. s. 13. Ir. and the 31 Hen. 8. c. 13. s. 23. Eng. further provides, that such of the religious houses and places, and all churches and chapels to them belonging, which, before their late dissolution, were exempted from the visitation of the ordinary within whose diocess they were, shall be within the visitation of such ordinary, or of such person shall be appointed by the king: and was in this respect followed by the 33 Hen. 8. st. 2. c. 5. s. 26. Ir.

33 Hen. 8. st. 2.
c. 5. s. 26. Ir.

§ 5.
*Dissolution of
Corporations not
occasioned by ir-
regular election
of Mayor, &c.*
11 Geo. 1. c. 4.
s. 1, Eng.

V. With respect to the dissolution of corporations, the 11 Geo. 1. c. 4. s. 1. Eng. provides, that if in any city, borough, or town corporate in England, &c. no election shall be made of the mayor, bailiff, or chief officer, on the day, or within the time, appointed by charter or usage;* or such election being made, shall afterwards become void; the corporation shall not be dissolved: but where no election shall be made, the members of such city, &c. who shall have a right to vote, or be present at, or to do any other act necessary to the completing of such election, shall assemble in the town-hall or usual place of meeting, on the day next after the expiration of the time within which such election ought to have been made, unless such day be Sunday, and then on the

the Monday following, between 10 in the morning and 2 in the afternoon, and proceed to the election of a mayor, &c. and do every act necessary to the completing such election; and if upon such day of meeting hereby appointed, the mayor or other officer, who ought to have held the court, shall be absent, then such other person having a right to vote, being the nearest then present in place or office to the person so absenting himself, shall hold the court, and have the same power as belongs to the mayor, &c. And by s. 4. the mayor or other chief officer elected pursuant to this act, shall take the oaths by law required, at the time of his admission, before the officer who presides at such election; and shall have the same powers as any mayor, &c. elected on the day fixed by charter, &c: but by s. 5. no such election shall be valid, unless as great a number of persons, having right to be present and vote therein, shall be present and concur, as would have been necessary in case the same had been made within the time appointed by charter, &c.* saving only that the presence of the mayor or other chief officer shall not be necessary. And by s. 6, if any mayor, bailiff, or other chief officer of any city, &c. shall voluntarily absent himself from, or knowingly and designedly hinder the election of any mayor, &c. within the time appointed by charter, or usage,* he shall suffer imprisonment for 6 months, and be disabled to hold any office belonging to the same corporation. The 19 Geo. 2. c. 12. Ir. contains clauses (s. 7. 9. 10. & 12.) corresponding to those of the 11 Geo. 1. c. 4. Eng. with this difference only, that it refers to the new rules established pursuant to the 17 & 18 Car. 2. c. 2. Ir. (*ante* page 424) as regulating the time and mode of elections, as well as charter or usage: and by s. 11. provides, that no mayor, bailiff, or other chief officer comprehended within the said rules, shall serve in the said offices, until he shall be approved of by the lord lieutenant and council pursuant to said rules.

s. 4.

s. 5.

s. 6.

s. 11.

The 13 & 14 Geo. 3. c. 42. s. 3. Ir. may be also referred to this place, which recites, that by the charters of several *Other irregularities in elections cured.*

* The new rules here referred to by the 19 Geo. 2. c. 12. Ir.

13 & 14 Geo.
3. c. 42. s. 3.
Ir.

several boroughs and corporations, a majority of the burgesses, or other members of such boroughs, &c., are required to be present at the swearing of the portrieve, or other chief magistrate of the same, which is frequently attended with great inconvenience; and therefore enacts, that no person (otherwise) duly elected into any such office, shall be sued, molested, or prosecuted, on account of any objection which shall be taken because there had not been a sufficient number of burgesses, &c. present at the swearing of such officer; provided such officer shall have taken the oaths required by law, in the presence of 2 of the burgesses or members, &c., in the public market house, or toll house, or usual place of holding assemblies of such borough, &c. between the hours of 10 in the morning and 3 in the afternoon; and such officers shall be deemed legal officers; and all corporate acts done by them shall have the same force, as if they had been sworn pursuant to said charters.

THE END OF THE FIRST BOOK.

CHAP.

CHAP. I.*

OF

Incorporeal Hereditaments.

HAVING in the preceding Book distributed the statutes with regard to the rights of persons, whether considered as individuals or private persons, or as members of society standing in various relations, public and private, to each other; I proceed in this Book, according to the arrangement of Sir W. Blackstone, to those statutes which respect the rights of persons, considered with relation to property, real and personal, corporeal and incorporeal.

Book II.

I. The right of *advowson* when vested in a subject, will pass or be conveyed by a grant of a manor or other thing to which it is appendant, without naming the advowson, or without other equivalent words; but in the case of the king, the appendancy will in such case be severed, and the right of presentation to the church become an advowson in gross: the statute *de prerogativa regis* 17 Edw. 2. st. 1. c. 15. E. & I. having provided, that when the king giveth or granteth land or a manor with the appurtenances, without he make express mention in his deed or writing, of advowsons of churches when they fall, belonging to such manor or land, then the king reserveth to himself such advowsons: and this statute declares that at that day it was observed otherwise amongst other persons. The statutes have been already stated or referred to,† which transferred to the king the advowsons or right

§ 1.

Advowsons appendant and in gross.

17 Edw. 2. st. 1. c. 15. E. & I.

†Vide page 319

* There are several chapters of this part of Sir W. Blackstone's Commentaries, to which no statute, English or Irish, is immediately referable: this chapter therefore corresponds with the 3d of that work.

right of presentations to several parsonages and vicarages, upon the dissolution of the monasteries and other religious houses to which they were appropriate.

*Advowsons of
papists.*

3 Jac. 1. c. 5.

s. 18. 19. 20-1.
Eng.

1 W. & M. st. 1.

c. 26. s. 2. Eng.

s. 3. & 4.

12 Ann. st. 2.
c. 14. Eng.

By the 3 Jac. 1. c. 5. Eng. popish recusants convict are disabled to present to any benefice, with cure or without cure, prebend, or other ecclesiastical living; or to collate or nominate to any free-school, hospital, or donative; or to grant any avoidance of any benefice, &c.: and the presentation to such benefices, &c. is thereby vested in the university of Oxford in some counties, and of Cambridge in others: provided that neither of the chancellors nor scholars of said universities, shall present to any such benefice, &c. any person who shall have any other benefice with cure of souls. And by the 1 W. & M. st. 1. c. 26. s. 2. & 5. Eng. persons refusing or neglecting to make and subscribe the declaration against popery in the 30 Car. 2. st. 2. as appointed by that act, are also disabled to present, &c. to any benefice, &c. as fully as if such persons were popish recusants convict; and such presentations &c. are thereby vested in said universities in like manner as by the 3 Jac. 1. c. 5. And by this statute (s. 3. & 4.) persons seised or possessed of any advowson, &c. in trust for any papist or popish recusant convicted or disabled by the 3 Jac. 1. c. 5. or by this act, are in like manner disabled to present, &c. as if such papist, &c. were seised, &c. thereof: and any trustee, mortgagee, or grantee of any avoidance who shall present, &c. to any ecclesiastical living, &c. whereof the trust shall be for any recusant, convict or disabled, without giving notice of the avoidance, in writing, to the vice-chancellor of the university, within 3 months after such avoidance, forfeits £500. to the chancellor and scholars of the university to whom such presentation, &c. shall belong. And by the 12 Ann. st. 2. c. 14. Eng. it is further enacted, that every papist, &c. and every child of such person, not being a protestant, under the age of 21, and every mortgagee, trustee, or person any way entrusted for such papist, &c. or for such child, whether such trust be declared by writing or not, shall be disabled to present, &c. to any benefice, &c.; and every such presentation, &c. shall be void: and the universities shall have

have the presentation, &c. as by the 3 Jac. 1. c. 5. *supra*. And this statute provides (s. 2.) that the archbishop, bishop, or other ordinary, to whom any presentation shall be brought from any person suspected to be a papist, or from the trustee of such person, shall tender or administer to every such person, if present, the declaration against transubstantiation in the 25 Car. 2. c. 2. Eng. and, if absent, shall, by notice in writing to be left at the place of habitation of such person, appoint some convenient time and place when and where such person shall appear before such archbishop, &c. or some person to be authorized by him by commission under his seal of office; and if such person shall neglect or refuse to make and subscribe the declaration when tendered, or to appear upon such notice, such presentation shall be void; and the archbishop, &c. shall within 10 days after, send a certificate under the seal of office, of such neglect, &c. to the vice-chancellor; and the presentation for that turn only shall be vested in the respective chancellor and scholars. And for the better discovery of secret trusts and fraudulent conveyances made by papists, it is enacted (s. 3.) that when any presentation, &c. shall be brought to the archbishop, &c. he shall, before he gives institution, examine the person presented upon oath, whether to the best of his knowledge and belief, the person who made such presentation be the true and real patron, or made the same in his own right, or whether he be not mediately or immediately, directly or indirectly, trustee or any way entrusted for some other, and whom by name, who is a papist, or maketh profession of the popish religion, or for the children of such, or for any other and whom, and what he knows, has heard, or believes touching the same; and if such person shall refuse to be examined, or shall not answer directly, the presentation shall be void. And this act further provides (s. 4. to 10.) for the discovery of such secret trusts, by bill in equity, or by examination of the patron and his clerk, upon oath, in any court where a *quare impedit* shall be depending. It is further enacted by the 11 Geo. 2. c. 17. s. 5. Eng. that every grant to be made of any advowson, or right of presentation, collation,

s. 2.

s. 3.

11 Geo. 2. c. 17.
s. 5. Eng.

nomination, or donation of and to any benefice, prebend, ecclesiastical living, school, hospital, or donative, and every grant of any avoidance thereof, by any papist, &c. or any mortgagee or person entrusted for any papist, &c. whether such trust be declared by writing or not, shall be void; unless such grant be made *bona fide*, and for a full and valuable consideration, to and for a protestant purchaser, and only for the benefit of a protestant: and every such grantee, or person claiming under such grant, shall be deemed to be a trustee for a papist, &c. within the 12 Ann. st. 2. c. 14.: and all such grantees and persons claiming under such grants, and their presentees, shall be compelled to make such discovery, and by such methods, as provided by the 12 Ann. And every devise by a papist, &c. of any such advowson, &c. or of any such avoidance, with intent to secure the benefit thereof to the heirs or family of such papist, &c. shall be void: and all such devisees, and persons claiming under such devises, and their presentees, shall in like manner be compelled to discover whether to the best of their knowledge and belief, such devises were not made with the said intent. And in Ireland by the 2 Ann. c. 6. s. 25. Ir. where any papist, &c. shall claim or possess any advowson, right of patronage or presentation to any ecclesiastical benefice, or where any protestant shall hold any advowson, &c. in trust for any papist, such advowson, &c. shall be vested in the crown, according to such estates as such papist had in the same, until such papist or the heir of such papist shall take such oaths, and subscribe such declaration, and conform in such manner as hereby required; (which will be stated in a subsequent chapter). And the 33 Geo. 3. c. 21. Ir. which removes the disabilities of catholics, but with certain exceptions, provides (s. 10.) that nothing in this act shall enable any papist, &c., to exercise any right of presentation to any ecclesiastical benefice. The 21 & 22 Geo. 3. c. 24. Ir. contained also a similar exception.

2 Ann. c. 6.
s. 25. Ir.

33 Geo. 3.
c. 21. s. 10. Ir.

21 & 22 Geo. 3.
c. 24. s. 1. Ir.

Tithe—exemptions of barren lands.

§ 2. II. Next as to *tithes*. Their origin is not to be deduced from any statute English or Irish: neither is there any act in either country defining the several kinds of tithes, their nature and properties. But with respect to exemptions from

from tithes, by the 2 & 3 Edw. 6. c. 13. Eng. which amends the 27 Hen. 8. c. 20. Eng. and 32 Hen. 8. c. 7. Eng. all such barren heath, or waste ground, other than such as be discharged from the payment of tithes by act of parliament, which before this time have lain barren and paid no tithe by reason of such barrenness, and now be or hereafter shall be improved and converted into arable ground or meadow, shall after seven years next after such improvement fully ended, pay tithe for the corn and hay growing upon the same: provided, that if such ground hath before this time been charged with the payment of any tithes, and the same be improved, &c. the owner thereof shall, during the said 7 years, pay such kind of tithe as was paid for the same before said improvement. And with the same view of promoting agriculture and the improvement of barren land, the 5 Geo. 2. c. 9. s. 6. & 7. Ir. provides that all barren heath, and moory ground, mountain, bog, moss, and land taken in and enclosed from the sea, or any lough or river, which by means of drains, banks, walls, or dykes, shall be improved and converted into arable or meadow land, shall be exempted from the payment of tithes for any hemp, flax, or rape growing thereon, during 7 years next after the improving and taking in thereof: provided such land did not at any time before such improving, &c. pay tithes for any corn, hay, hemp, flax, rape, or potatoes. And by s. 8. no land shall by this act be discharged from paying for tithe, such sum as said land paid for any one of the preceding 7 years. And by the 33 Geo. 3. c. 25. s. 1. Ir. all such barren heath, and waste ground which hitherto hath lain waste, and paid no tithe by reason of such barrenness, and which shall be improved, and converted into arable ground or meadow, shall until the end of 7 years after improving the same, be exempted from the payment of all tithes whatsoever, any law or custom to the contrary notwithstanding. But by s. 3. no person shall be entitled to such exemption, who shall not have given notice in writing to the parson, rector, vicar, or curate, or impropriator, or his known proctor or agent, in the parish or union in which such land lies, of the time from which he means to claim such exemption, at least 6 calendar months

2 & 3 Edw. 6.
c. 13. Eng.
27 Hen. 8. c. 20.
Eng.
32 Hen. 8. c. 7.
Eng.

5 Geo. 2. c. 9.
s. 6. & 7. Ir.

33 Geo. 3. c. 25.
s. 1. Ir.

s. 3.

before the commencement of such period, specifying in such notice the quantity and quality of such land, and its situation, together with a map or survey of such land, verified by the oaths of 2 surveyors, (which any magistrate of the county may administer), (one of which surveyors shall be named by the proprietor or occupier, and the other by the parson, &c.) to be, to the best of their judgment and belief, a true survey; which notice and survey shall be registered by such parson, &c. in the registry of the diocess; and such notice and survey, or a copy thereof attested by the register, shall be conclusive evidence of the quantity and situation of the land, and of the time from whence the exemption from tithe commenced, if the same land shall be entitled to such exemption under this act. And by s. 4. in case the person claiming any exemption from tithes under this act, shall by notice duly served for that purpose, require any parson, &c. to appoint a surveyor to assist in making such map, &c. and that such parson shall for 1 month after the service of such notice, refuse or neglect to appoint such surveyor, such map, &c. verified by the one surveyor appointed by the person claiming such exemption, shall be as effectual as if verified by the oaths of the two. And "towards preventing the pernicious practice of burning land, by which no permanent improvement is made," this statute provides (s. 5.) that where the soil or surface shall be burned, no part of such land shall be deemed to have been improved within the meaning of this act, nor shall such land be discharged from tithe by virtue of this act, unless the consent of the proprietor of such land in writing, under his hand and seal, be obtained before any part thereof be burned. With respect to abbey-lands also, by the 31 Hen. 8. c. 13. s. 21. Eng. as well the king as all other persons, their heirs and assigns, who shall have any of the monasteries, or other ecclesiastical houses or places, or any manors, messuages, parsonages appropriate, tithes, pensions, portions or other hereditaments which belonged to any religious house, (whose surrender was confirmed by this act,) shall hold the same discharged of the payment of tithes, in as ample a manner as the late abbots, priors, and

s. 4.

s. 5.

31 Hen. 8. c. 13.
s. 21. Eng.*Abbey-lands
exempt.*

and other ecclesiastical governors held and enjoyed the same. And the 33 Hen. 8. st. 2. c. 5. Ir. contains a similar provision. 33 Hen. 8. st. 2. c. 5. s. 25. Ir.

As to what things are titheable: By the 45 Edw. 3. c. 3. E. & I. at the complaint of the great men and commons, shewing by their petition, that whereas they sell their great wood of the age of 20 years, or of greater age, to merchants to their own profit, or in aid of the king in his wars, parsons and vicars of holy church do implead and draw the said merchants in the spiritual court, for the tithes of said wood, in the name of *sylva cædua*, whereby they cannot sell their woods to the very value, to the great damage of them and of the realm; it is ordained and established, that a prohibition in this case shall be granted, and upon the same an attachment, as it hath been used before this time. And by the 11 & 12 W. 3. c. 16. Eng. every person who shall sow any hemp or flax, shall pay to the parson, vicar, or impropriator, yearly, 5s. for each acre of hemp and flax, before the same be carried off the ground, and so proportionably for more or less; for the recovery of which the parson, &c. shall have the usual remedy. But by s. 2. this act shall not charge any lands discharged by any *modus decimandi*, ancient composition, or otherwise. The tithe of hemp is in like manner ascertained by the 28 Geo. 3. c. 29. Ir. : but no statute has defined the tithe payable for flax sown in Ireland. But with respect to agistment,* which is a species of mixed No tithes for wood.
45 Edw. 3. c. 3. E. & I.
11 & 12 W. 3. c. 16. Eng.
Tithe of hemp and flax.
28 Geo. 3. c. 29. Ir.

*

* The following resolutions were passed by the house of commons of Ireland on the 11th March, 1735: That the allotments, glebes, and known tithes, with other ecclesiastical emoluments, are an honourable and plentiful provision for the clergy of this kingdom.—That the demand of tithe agistment for dry and barren cattle is new, grievous, and burdensome to the landlords and tenants of this kingdom, who could have no notice thereof previous to their purchases and leases, nor the least apprehensions that such unforeseen demands could have been claimed: That the commencing suits upon these new demands must impair the protestant interest, by driving many useful hands out of this kingdom; must disable those that remain, to support his majesty's establishment; and occasion popery and infidelity to gain ground, by the contest that must necessarily arise between the laity and clergy. Com. Journ. vol. 6. p. 658. 672.

tithe, payable in England for the pasturage of stock not otherwise beneficial to the parson, as for dry or barren cattle, &c. the 40 Geo. 3. c. 23. Ir. recites, that tithe agistment for dry and barren cattle has not been demanded for more than 60 years *then* last past, and enacts, that no claim shall be allowed for tithe agistment for dry and barren cattle, nor shall any suit be entertained in any court of civil or ecclesiastical jurisdiction for the recovery of the same: but nothing herein shall exempt from the payment of tithe any kind of cattle in any parish, or part of this kingdom, in which tithe now is or has been usually paid within the last 10 years. With respect to personal tithes: the tithe payable in respect to corn mills is of this description, the right of which is confirmed by the 9 Edw. 2. st. 1. c. 5. E. & I. which provides, that if any do erect in his ground a mill of new, and afterwards the parson demandeth tithe for the same, the king's prohibition shall not lie. And by the 2 & 3 Edw. 6. c. 13. s. 7 & 8. Eng. every person exercising merchandize, bargaining and selling, clothing, handicraft, or other art or faculty, being such persons, and in such places, as heretofore within 40 years have accustomedly used to pay such personal tithes, or of right ought to pay, (other than such as be common day labourers) shall yearly, at or before the feast of Easter, pay for his personal tithes the 10th part of his clear gains, deducting his charges and expenses, according to his estate, condition, or degree: provided that in all cases where handicraftsmen have used to pay their tithes within these 40 years, the same custom shall be observed and continue. But by s. 11. this act shall not extend to any parishes which stand upon and towards the sea coasts, the commodities and occupying whereof consist chiefly in fishing, and have by reason thereof used to satisfy their tithes by fish; but all such parishes shall pay their tithes as heretofore of ancient time within these 40 years accustomed. And this act is declared (s. 12.) not to extend to the cities of London and Canterbury, and the suburbs of the same, nor to any other town or place that used to pay their tithes by their houses,

40 Geo. 3. c. 23.
Ir.

Agistment tithe.

9 Edw. 2. st. 1.
c. 5. E. & I.

Personal tithes.

2 & 3 Edw. 6.
c. 13. s. 7. & 8.
Eng.

s. 11.

s. 12.

houses.* There is no such statute, relative to the payment of personal tithes, in Ireland.

III. As to *common*. The right of the lords of manors to enclose and convert to the uses of husbandry any waste grounds, woods, or pastures, in which their tenants have common appendant to their estates, provided they leave sufficient common to their tenants, is thus declared by the statute of Merton 20 Hen. 3. c. 4. E. & I.: Whensoever feoffees bring an assise of *novel disseisin* for their common of pasture, and it is recognized before the justices, that they have as much pasture as is sufficient for their hold, and that they have free egress and regress from their hold unto the pasture, then let them be contented therewith; and they on whom they have complained shall go quit, for that they have made their profits of their lands, waste, woods, and pastures. And if they allege that they have not sufficient pasture, or not sufficient egress and regress, as appertaineth to their hold, then let the truth be inquired by the assise. And if it be found by the assise, that the same deforceors have disturbed them of their egress or regress, or that they have not sufficient pasture, then shall they recover their seisin by view of the inquest, so that by their discretion and oath the plaintiffs shall have sufficient pasture, and egress and regress, and the disseisors shall be amerced and yield damages. And if it be found by the assise, that the plaintiffs have sufficient pasture, and sufficient egress and regress, let the other make their commodity of the residue, and go quit. And the lords of manors may by the statute of Westm. 2. 13 Edw. 1. st. 1. c. 46. E. & I. in like manner exercise this right of approving against all others that have common appurtenant, or in gross, as well as against the tenants who have their common appendant: this statute having enacted that what the statute of Merton provided between the lord

§ 3.

Common of pasture.

20 Hen. 3. c. 4. E. & I.

13 Edw. 1. st. 1. c. 46. E. & I.

* Provision was made for the ministers of London by the 27 Hen. 8. c. 21. Eng. 37 Hen. 8. c. 12. Eng. and 22 & 23 Car. 2. c. 15. Eng. The mode of payment established by these acts, which was grounded on ancient custom, was a poundage upon the rent of houses, &c. similar to minister's money in Ireland. *Vide* page 353.

lord and his tenant, shall hold place between lords of waste, woods, and pastures, and neighbours; so that the lords of such wastes, &c. may make improvement of the residue. And this shall be observed for such as claim pasture as pertaining to their hold; but if any claim pasture by special feoffment or grant for a certain number of beasts, or otherwise than he ought to have of common right, he shall have such recovery as he ought by form of the grant made unto him. By occasion of a windmill, sheepcote, dairy, enlarging of a court or courtilage, no man shall be aggrieved by assise of *novel disseisin* of common of pasture. By the 29 Geo. 2. c. 36. Eng. and 31 Geo. 2. c. 41. Eng. the lords of wastes and commons, with the consent of the major part, in number and value, of the commoners, may enclose any part thereof for the growth of timber and underwood. And by the 13 Geo. 3. c. 81. Eng. three-fourths in number and value of the occupiers of open or common field lands are empowered, with the consent of the owner, rector, and impropriator, and tithe owner, to make rules for the ordering, fencing, cultivating and improving the tillage or arable lands lying in such common fields; and the major part, &c., of the persons having right of common, may also alter the mode of depasturing common pastures. And the 41 Geo. 3. c. 109. G. B. is to be here also referred to, which is an act for consolidating in one act certain provisions usually inserted in acts of enclosure; and for facilitating the mode of proving the several facts usually required on the passing of such acts. The object of the Irish statutes 29 Geo. 3. c. 30. Ir. 31 Geo. 3. c. 38. Ir. and 36 Geo. 3. c. 50. Ir. in respect to commons, has been to protect them from encroachments and nuisances, by punishing such offences, and by the appointment of inspectors, in certain cases, to preserve them from any waste or injury.

Common of
Estovers.

31 Geo. 3. c. 40.
Ir.

With respect to common of Estovers. This right which exists in England, of taking necessary wood for the use or furniture of a house or farm, from off another's estate, is restrained in Ireland by the 31 Geo. 3. c. 40. Ir. which enacts, that no person holding any lands by lease for one or more lives, or for years, or by will or sufferance, shall

ent

cut down, grub up, lop or top, any tree, wood, or under-wood, growing upon such lands, under colour of estovers, or of house-bote, plough-bote, hay-bote, cart-bote, or other bote, or under any other pretence, unless such person shall be authorized thereto, by covenant in the lease under which said lands shall be held, or unless such person shall have the consent of the owner thereof under his hand and seal. But by s. 5. this act shall not extend to any person who holds by virtue of a lease for lives renewable for ever, nor to affect any person in respect of any trees planted and registered in pursuance of any former law. The 5 Geo. 3. c. 17. Ir. which is one of the acts for encouraging the planting of timber trees, provides, (s. 2.) that if any tenant for life or lives by settlement, dower, curtesy, jointure, lease, or any office, civil, military, or ecclesiastical, impeachable of waste, or any tenant for years exceeding 12 years unexpired, shall plant any timber trees, such tenant during the term shall be entitled to house-bote, plough-bote, cart-bote, and carbote of such trees by him planted, and at the expiration of the term to said trees or the value thereof, according to the directions herein mentioned. But by s. 3. such trees are required to be registered within a certain time, and in a particular manner.*

s. 5.

5 Geo. 3. c. 17.
s. 2. Ir.

s. 3.

IV. Next as to *offices*. The 28 Edw. 1. st. 3. c. 13. E. & I. and 12 Ric. 2. c. 2. E. & I. which prohibit the corrupt appointment to certain offices have been already stated, (pages 209. & 210.) And the 2 Hen. 6. c. 10. E. & I. further enacts, that all officers made by the king's letters patent within the king's courts, which have power, by virtue of their offices, to appoint clerks and ministers within such courts, shall be charged and sworn to appoint such clerks, &c. for whom they will answer at their peril, which be sufficient, faithful, and attentive, so far as belongs to such offices, to the business of the king and his people. By the 5 & 6 Edw. 6. c. 16. s. 2. Eng. if any person bargain or sell any office, or deputation, or any part of them, or receive money or other profit, or take any promise

§ 4.

*Offices—corrupt
appointment to,
prohibited.*2 Hen. 6. c. 10.
E. & I.5 & 6 Edw. 6.
c. 16. s. 2. Eng.

* This statute will be more fully stated in a subsequent chapter.

promise or assurance to have any money, or profit, for any office, &c., which office shall concern the administration or execution of justice; or the receipt, controlment, or payment, of any of the king's treasure, revenue, auditorships, or surveying of lands, or the king's customs, or any administration or necessary attendance in the custom houses; or the keeping of any of the king's fortresses; or which shall concern any clerkship in any court of record wherein justice is to be ministered; every such person shall lose all his right and estate in the office, or the gift or nomination of the office, and be adjudged a disabled person to have such office, &c. And by s. 3. all such bargains, agreements, and assurances shall be void. But by s. 4. this act shall not extend to any office whereof any person is seised of any estate of inheritance, nor to any office of parkership, or of the keeping of any park, house, manor, garden, chace or forest. Nor by s. 7. to the chief justices of K. B. and C. B. or to any justices of assize, who may do concerning offices to be granted by them, as they might have done before. And it is provided (s. 5.), that if any person offend contrary to this act, yet all acts done by such person by authority of the office or deputation, before such person be removed, shall be good. No Irish statute has prohibited the sale of offices.

CHAP. II.

Of the Ancient and Modern English Tenures.

Military Tenures abolished.
12 Car. 2. c. 24.
Eng.

THE 12 Car. 2. c. 24. Eng. recites, that it hath been found by experience, that the courts of ward and liveries, and *tenures by knight service*, either of the king or others

others, or by knights-service *in capite*, or socage *in capite* of the king, and the consequents upon the same, have been much more burdensome, grievous, and prejudicial to the kingdom, than they have been beneficial to the king; and therefore enacts, that the court of wards and liveries, (established by the 32 Hen. 8. c. 46. Eng. and 33 Hen. 8. c. 22. Eng.) and all wardships, liveries, *primer seisins* and *ouster-le-mains*, values and forfeitures of marriages, by reason of any tenure of the king's majesty, or of any other, by knights-service, and all charges incident or arising for or by reason of wardships, liveries, *primer seisins* or *ouster-le-mains* shall be taken away: with their appendages.

And that all fines for alienations, seizures and pardons for alienations, tenure by homage, and all charges incident or arising by reason of wardship, livery, *primer seisins* or *ouster-le-main*, or tenure by knights-service, *escuage*, and also *aide pur file marrier*, and *pur faire fits chevalier*, and other charges, be likewise taken away:

And that all tenures by knights-service *in capite*, and by socage *in capite* of the king, and the fruits and consequents thereof be taken away; and all tenures of any honours, manors, lands, &c., or any estate of inheritance at the common law, held either of the king, or of any other person or body, be turned into free and common socage. and converted into free socage.

And (by s. 2.) that the same be for ever discharged of all tenure by homage, *escuage*, *voyages royal* and charges for the same, wardships incident to tenure by knights-service, and values and forfeitures of marriage, and other charges incident to tenure by knights-service, and from *aide pur file marrier*, and *aide pur faire fits chevalier*: And that all conveyances and devises of any manors, lands, &c., made since the * 24th February, 1645, shall be expounded to be of the same effect, as if the same manors, &c., had been then held, and continued to be holden, in free and common socage only. By s. 4. all tenures to be created by the king, of any estate of inheritance at the common law, shall be in free and common socage only, and not by knights-service, or *in capite*, and

s. 2.

s. 4.

* The 14 and 15 Car. 2. c. 19. Ir. has relation to the 23d October, 1641, the period of the Irish rebellion.

s. 5.
Heriots, &c.
reserved.

s. 6.
Fines in parti-
cular manors.

s. 7.
Frank-almoign.
Copy-hold.
Grand-serjeanty.

s. 11.
Titles of honour.

and shall be discharged of all wardship, value and forfeiture of marriage, livery, *primer seisin*, *ouster-le-main*, *aide pur faire fitz chevalier*, and *pur file marrier*. But by s. 5. this act shall not take away any rents certain, heriots, or suits of court, incident to any former tenure now taken away, or other services incident to tenure in common socage, or the fealty and distresses incident thereunto: And such relief shall be paid in respect of such rents, as in case of the death of a tenant in common socage. And by s. 6. any thing herein shall not take away any fines for alienation due by particular customs of particular manors and places, other than fines for alienation of lands holden immediately of the king *in capite*. By s. 7. this act shall not take away tenures in frank-almoign, or subject them to greater services; nor alter any tenure by copy of court-roll, or any services incident thereunto; nor take away the honorary services of grand-serjeanty, other than of wardship, and other charges incident to tenure by knights-service; and other than *aide pur faire fitz chevalier*, and *aide pur file marrier*. And by s. 11. this act shall not infringe any title of honour, feudal or other, by which any person may have right to sit in the lords house of parliament. This statute has therefore rendered obsolete a number of ancient statutes, which respected the several incidents of this tenure by knights-service. The feudal polity was a part of the English system of laws that was introduced into Ireland, in the reign of king Henry II., and which was in force at least amongst the English settlers. The great charter which was framed for Ireland, contained several provisions respecting the feudal tenures; and the *statutum Hiberniæ de cohæredibus* already referred to (page 418) is a very ancient record to prove their existence in Ireland. But these military tenures, with their slavish and oppressive appendages, were here also abolished by 14 & 15 Car. 2. the 14 & 15 Car. 2. c. 19. Ir. which contains clauses corresponding to those of the 12 Car. 2. c. 24. *supra*.

§ 2. II. With respect to the tenure *by copy of court-roll*, which is excepted by the 14 and 15 Car. 2. c. 19. Ir. as well as by the 12 Car. 2. c. 24. Eng. which it follows;
Copyhold tenure scarcely known in Ireland.
Dr. Sul-

Dr. Sullivan in his learned treatise on the feudal law observes,* that though copyhold tenants (and tenants in ancient demesne) are common in England, yet there are none such in Ireland. It is very true that there is scarce any trace of this villenage tenure, whether pure or privileged, in Ireland: And I believe the manor of Kilmoon or Primate's-town, in the County of Meath, where the copy-hold tenure exists, is a single exception to the truth of the learned Doctor's observation.†

III. The relief due upon *socage tenure* is ascertained by the 28 Edw. 1. st. 1. E. and I. which declares that a free sokeman shall give no relief, but shall double his rent after the death of his ancestor, according to that which he hath used to pay his lord, and shall not be grieved above measure. As to wardship, which is another incident to tenure in socage, the 52 Hen. 3. c. 17. E. and I. provides, that if land holden in socage be in the custody of the friends of the heir, because the heir is within age, the guardians shall make no waste, nor sale, nor destruction of the inheritance; but shall safely keep it to the use of the heir, so that when he cometh to his lawful age, they shall answer to him for the issues by a lawful account, saving to the guardians their reasonable costs. And the 28 Edw. 1. st. 1. E. and I. further declares, that where lands in socage descend on the part of the mother, the guardianship shall belong to the next of kin upon the part of the father. But the provision of the 12 Car. 2. c. 14. Eng. and 14 and 15 Car. 2. c. 19. Ir. has been already stated, by which this guardianship in socage may be superseded by the appointment of a testamentary guardian.

§ 3.

*Socage tenure, relief and wardship.*28 Edw. 1.
st. 1. E. & I.52 Hen. 3.
c. 17. E. & I.

CHAP.

† There is not at present any such thing as a copy-hold in the counties of Anglesey, Carnarvon, and Merioneth; nor are there in Ireland any such tenures. Barrington's observations on the statutes, page 234.

CHAP. III.

Of Freehold Estates of Inheritance.

Statute de donis.

13 Edw. 1. st. 1.

c. 1. s. 1 & 2.

E. & I.

The Statute Westm. 2. 13 Edw. 1. st. 1. c. 1. s. 1 & 2.

E. & I. (commonly called the statute *de donis conditi-*
onalibus) enacts concerning lands given upon condition,

viz. where any giveth his land to a man and his wife,

and to the heirs begotten of the man and his wife, with

condition expressed, that if the man and his wife die

without heirs of their bodies between them begotten, the

land shall revert to the giver or his heir; also where one

giveth lands in free marriage, which gift hath a condi-

tion annexed, though not expressed in the deed,

that if the husband and wife die without heir of their

bodies begotten, the land shall revert to the giver or his

heir; also where one giveth land to another, and to the

heirs of his body issuing; the will of the giver, accord-

ing to the form in the deed of gift, shall be observed;

so that they to whom the land was given under such con-

dition, shall have no power to alien the land, but it shall

remain to their issue after their death, or shall revert to

the giver or his heirs, if issue fail; neither shall the

second husband of any such woman have any thing in

the land so given, after the death of his wife by the law

of England; nor shall the issue of the second husband

succeed to the inheritance; but immediately after the

death of the husband and wife to whom the land was

given, it shall return to their issue, or to the giver, or to

his heir. And by s. 3. this manner of writ shall be

granted to the party that will purchase it. *Præcipe A**quod juste, &c. reddat E. manerium de F. cum suis per-**inentiis quod C. dedit tali viro et tali mulieri, et hæredibus**de ipsis viro et muliere exeuntibus: Or thus, quod C. dedit**tali viro in liberum maritagium cum tali muliere, et quod**post*

post mortem prædictorum viri et mulieris, prædicto B. filio eorundem viri et mulieris descendere debeat per formam donationis prædictæ, ut dicit, &c. : Or, quod C. dedit tali et hæredibus de corpore suo exeuntibus, et quod post mortem illius talis, prædicto B. filio prædicti talis descendere debeat per formam, &c. This statute (s. 4.) also provided that if a fine should be levied upon such lands, it should be void in law; and that neither the heirs, nor those in reversion, though of full age, within England, and out of prison, need to make their claims: but the statutes which have since directly authorized, or indirectly sanctioned, the barring of such estates tail by fine, and by a common recovery, will be stated in a subsequent chapter.

s. 4.

CHAP. IV.

Of Freeholds not of Inheritance.

THE principle of law which restrains tenants for life from cutting down timber, or committing other waste upon their estates, has been modified by several statutes passed in Ireland for the encouragement of planting. By the 9 Geo. 2. c. 7. Ir. if any person seised of an estate for life, or in tail, with a remainder over, shall plant on his said estate oak, ash, elm, fir, or other timber tree, the executors or administrators of such tenant for life, &c., shall be entitled to a moiety of such trees, except planted for ornament or shelter in any avenue leading to the mansion house, or in the walks of any garden belonging to the mansion house of such tenant for life, &c.; to be recovered from the person in possession of the estate by virtue of such remainder, in manner following: (viz.) the said executors, &c., shall, within one year after the

§ 1.

Tenants for life, &c., entitled to a moiety of timber trees planted by them.

9 Geo. 2. c. 7.

Ir.

*Proceeding by
their executors
to charge the
remainder-man.*

the death of the said tenant for life, &c., take out of chancery a writ of inquiry directed to the sheriff of the county where such trees stand, (for the sealing of which 1s. shall be paid) empowering the sheriff, within 21 days after the receipt of said writs, to inquire by a jury, (having first given to the party so in possession, or his guardian, if residing within said county, 15 days notice of the time and place of holding such inquiry; or if they are not residing within the county, such notice as by said court shall be thought reasonable,) into the full value of the trees planted; which value, when so ascertained, shall be signed by the sheriff and jurors, and returned into chancery the first day of the next term; for which inquiry and return the sheriff shall receive 13s. 4d. And the chancellor shall within the said term, upon prayer or motion of the person entitled to the benefit of the inquiry, or of the person so in possession, by his counsel, upon proof of any fraud or corruption in the said sheriff or jurors in holding the said inquiry, grant a new inquiry to be held within the same time, in the same manner, and at the same charges as the former inquiry: But if no complaint shall be made, or if such complaint shall be disallowed, or if another inquiry shall be so held, and certified into chancery, the person entitled to the benefit of the inquiry shall give notice to the person so in possession, 15 days before he shall move for a decree for a moiety of the value of the trees so certified, and the chancellor, &c., shall on such motion decree to the said executor, &c., one moiety of the value so returned; which decree, when inrolled, shall from such inrolment charge the estate so descended, as a judgment does an estate in fee-simple, and shall bear interest from the time of such inrolment; for which inrolment, and a copy thereof, (which copy shall be evidence in any case concerning said moiety) 2s. 6d. shall be paid: And the said moiety so decreed, shall be assets in the hands of the said executor, &c., to be applied as the other personal assets of the said tenant for life, &c. Provided (s. 2.) that if the person in possession of the estate by virtue of such remainder, shall choose to give the moiety of the trees to the executor, &c., in

s. 2.

*Remainder-man
may give moiety
in kind.*

&c., in kind, then the said executor, &c., shall be obliged to accept said moiety, and shall have free ingress, egress, and regress, for a reasonable time, to cut and carry away said trees. But by s. 3. if any person in possession of any estate by virtue of such remainder shall cut or carry away, or suffer to be cut or carried away, any trees so planted, between the death of such tenant for life, &c., and such inquiry held, then the said executor, &c., shall be entitled to, and shall have a decree for, the full value of the trees so cut, &c.

s. 3.

Penalty for cutting before value ascertained.

The 5 Geo. 3. c. 17. Ir. further enacts, that from the 1st September, 1766, tenants for lives renewable for ever, paying the rents and performing the other covenants in their leases, shall not be impeachable of waste in timber trees or woods which they shall hereafter plant, any covenant in leases or settlements heretofore made, law, or usage to the contrary notwithstanding. And by s. 2.

Lessees for lives renewable for ever entitled to trees planted.

5 Geo. 3. c. 17. s. 1. Ir.

s. 2.

from the time any tenant for life or lives, by settlement, dower, curtesy, jointure, lease, or any office, civil, military, or ecclesiastical, impeachable of waste, [or any tenant for years exceeding 12 years unexpired] shall plant sally, osier, or willows, the sole property of such shall, during the continuance of the term, vest in the tenant, and he may cut and sell the same; and if such tenant shall plant any timber trees of oak, ash, elm, fir, pine, walnut, chesnut, horse chesnut, quicken or wild ash, alder, poplar, or other timber trees, such tenant, during the term, shall be entitled to house-bote, plough-bote, cart-bote and car-bote of such trees; and at the expiration of the term, or where such trees shall have attained maturity, shall be entitled to said trees, or the value of them: Provided (s. 3.) that each person so planting shall, within 6 months after such planting, lodge with the clerk of the peace of the county where such plantation is made, a certificate under the hand of the tenant, containing the number and kind of the trees planted, their height, and year's growth at the time of planting, and a clear description of the places and manner wherein they shall be planted; which certificate shall be kept on a separate file amongst the records of the

*Tenant for life entitled to osiers, &c., planted.**and to botes, &c., out of timber trees during term.**and to trees after, &c.*

s. 3.

Trees to be registered.

county, and entered in an alphabetical book by the denomination of the land in the said county; (which by the 15 and 16 Geo. 3. c. 26. s. 5. Ir. the clerk of the peace is required to do, upon pain of forfeiting £5 to any person who shall sue by civil bill) and such certificate, or a copy thereof, attested by the acting clerk of the peace, shall be evidence of notice of such plantation in all courts; for filing of which certificate, alphabetizing the same, and making and attesting a copy thereof, the clerk of the peace shall receive 1s. and for a copy of such certificate 6d.; to which book and certificate all persons may resort during each quarter sessions without fee. By s. 4. where the term of the tenant is uncertain, such tenant paying the rent and performing the other covenants in his lease, may, for one year after the expiration of his term, enter on the lands, and cut in due seasons all the trees so planted and registered, and manufacture the same on the lands for one year next after such felling, making reasonable satisfaction to the inheritor for the trespass committed by felling, coaling, or manufacturing the same: And where the expiration of the term is certain, the tenant during the last year of his term, paying the rent and performing the covenants, may in like manner cut and carry away such trees. But by s. 5. any person entitled to the reversion and inheritance of the lands, mediately or immediately, shall be at liberty, during the last year save one of the term, when the expiration is certain, and within 6 calendar months after the expiration of a term for life or on any uncertain contingency, to apply by petition to the justices of peace of the county at their quarter session, and set forth his title and intention, giving the tenant 21 days notice; and upon entering into a recognizance with sufficient securities, conditioned to pay such tenant such sums as shall be adjudged to be the value of said trees, according to the rules of this act, the property of the trees shall, from the time of such notice, vest in such petitioner; and the justices shall, at the same or ensuing session, by a jury of freeholders of the county, ascertain the value of the trees when felled over and above the expense of felling, and the

com-

s. 4.

*Time allowed
for cutting.*

s. 5.

*Reversioner
may purchase
the trees.*

compensation to be made, if any such be; which, with the record of such judgment and recognizance, shall be by the justice, at the instance of the party interested, certified into chancery; and execution shall issue thereupon as usual in recognizances taken before a master of that court: But if such petitioner shall fail to give such security, at such session, according to such notice, the property of such trees shall remain in the tenant. And by s. 6. if more than one person entitled to such reversion shall petition, that person shall be preferred who has the most immediate title to the reversion. And by s. 8. where the reversion belongs to a minor, and the court of chancery shall adjudge, that it is for the benefit of the minor to purchase such trees, the guardian shall have allowance for what he pays, and expenses, for such purchase. And if the person purchasing such trees shall be tenant for life, or in tail, impeachable of waste, such purchaser shall stand in the place of such planter, and such trees, if not felled by him during the subsistence of his title, shall be felled or valued according to the rates of this act. And in order to ascertain what compensation shall be made by such tenant, entitled by this act to fell trees, after the expiration of his term, such tenant may by s. 9. petition the justices, giving the reversioner like notice, and on the tenants giving the like security by recognizance, the court shall by a jury ascertain the damages, and the like remedy shall be on the buyer as by s. 5. But by s. 7. this act shall not extend to leases made by guardians of minors, or custodees of lunatics or idiots, or to any persons in possession as creditors by mortgage, *custodiam, elegit*, or otherwise, or deriving under such only, or to any tenant who shall be evicted for non-payment of rent. By s. 10. the fees of the clerk of the peace for filing and entering every petition shall be 6*d.*; for filing and copying every affidavit 6*d.*; for making and filing every recognizance, 2*s.* 6*d.*; for rule for trial and precept to the sheriff, each party, 1*s.*; for making, recording, and certifying the same to chancery, 6*s.* 8*d.* The several exemptions, privileges, and encouragements granted to tenants for lives renewable for ever by this

s. 6.

s. 8.

s. 9.

s. 7.

Tenants excepted.

s. 10.

7 Geo. 3. c. 20.
s. 11. 1*r.*

Fee farmers to have like privileges.

17 & 18 Geo. 3. c. 35. s. 1. Ir.

Renewed leases.

Tenant for life, or for 14 years, may cut trees during term.

23 & 24 Geo. 3. c. 39. Ir.

s. 2.

upon registering in this form.

act, are extended to persons holding by fee farm, by the 7 Geo. 3. c. 20. s. 11. Ir. And by the 17 & 18 Geo. 3. c. 35. s. 1. Ir. the surrender of any lease for years to any body corporate for the purpose of taking a new lease, shall not be considered an expiration of the term so far as respects the 5 Geo. 3. c. 17. *supra*. *

The 23 & 24 Geo. 3. c. 39. Ir. is intituled an act to amend the laws for the encouragement of planting timber trees: and recites that the former laws have proved ineffectual; and enacts that any tenant for life or lives, by settlement, curtesy, jointure, lease, or office civil, military, or ecclesiastical, impeachable of waste, [or any tenant for years, exceeding 14 years unexpired,] who shall plant any timber trees of oak, ash, elm, beech, fir, alder, or any other trees, shall be entitled to cut, sell, and dispose of the same, or any part, at any time during the term: Provided (s. 2.) that such tenant shall within 12 calendar months after such planting, lodge with the clerk of the peace of the county or county of a city, where such plantation shall be made, an affidavit sworn before a justice of such county,, reciting the number and kinds of trees so planted, and the name of the lands, in form following: “ I *A. B.* do swear that I have
“ planted, or caused to be planted, within 12 calendar
“ months last past, on the lands of ——— in the
“ parish of ———, held by me from ———, the
“ following trees: (*here reciting the number and kinds*
“ *of trees*) and that I have given notice to the person or
“ persons under whom I immediately derive, or his, her,
“ or their agent, of my intention to register said trees,
“ 20 days at the least previous to this day, and that I
“ have given notice of my intention to register said trees
“ by public advertisement in the Dublin Gazette, 30
“ days at the least previous to the date hereof,” *or else*,
“ and that I have also given notice of the same in writing
“ to the head landlord, owner or owners of said ground,
“ or his or their agent, 20 days previous to the date
“ hereof (*as the case may be*);” which affidavit the clerk

* Referred to by this act, as passed in the 6th year of his present majesty.

clerk of the peace shall keep on a separate file, amongst the records of the county, and enter in an alphabetical book, by the denomination of the land; for filing which affidavit, alphabetizing the same, and making and attesting a copy thereof, the clerk of the peace shall receive 1s., and for a copy of the affidavit given at any after time, 6d.; and to which book and affidavit any person may resort, during any quarter sessions of the peace for said county, paying 3d.; and such clerk of the peace shall read in open court, at every general quarter sessions, all affidavits as aforesaid which shall have been lodged with him since the preceding general quarter sessions, under the penalty of 20s. for every omission, to be recovered by civil bill, by any person who shall sue for the same within 12 months after the quarter sessions at which he ought to have so read such affidavit. And by s. 3. if any tenant as aforesaid shall enclose any piece of ground containing coppice wood, which he is not bound by his lease to enclose or preserve, and which has not been enclosed or preserved from cattle for 5 years preceding, the said tenant shall have power to cut, sell, and dispose of the trees, which shall grow from said coppice during his term, leaving one timber tree on every square perch of such coppice where timber trees are growing. But by s. 4. before his enclosing the same, he must give notice at a quarter sessions to be held for said county, that he intends to enclose said ground within the space of 12 calendar months then next ensuing, in form following: "I *A. B.* do hereby give notice, "that I intend to enclose ——— acres or roods, (*as the case may be*) of the lands of ———, in the parish of "———, held by ——— from ———, for the purpose "of preserving the coppice growing thereon." Which notice shall be given to the clerk of the peace, and by him read aloud in the presence of the justices; and for so doing the clerk of the peace shall receive 6d.; a copy of which notice shall be given to the person from whom such lands are holden, or his agent. And by s. 5. in order to entitle himself to any benefit from said enclosure, the tenant shall also within 6 calendar months after

*Duty and fees
of clerk of peace.*

s. 3.

*Coppice wood,
how cut.*

s. 4.

*Notice of en-
closing coppice.*

s. 5.

*Map thereof to
be lodged, and
affidavit sworn.*

after said enclosure, lodge with the clerk of the peace a map of the ground so enclosed, and an affidavit sworn before some justice of said county, in form following: "I *A. B.* do swear that I have enclosed ——— acres, ——— roods, ——— perches of the lands of ———, in the parish of ———, which I hold from ———, and that I have counted the trees exceeding 6 feet in height, and which are now standing thereon, according to the best of my skill and judgment, and that they amount to no more than ——— trees, of the following kinds (*here naming the kinds of trees, and the number of each kind which they do not exceed*) or else, and that there are no trees exceeding 6 feet in height, growing upon said lands so enclosed by me, (*as the case may be*) and that I intend to preserve said lands so enclosed from cattle, for the space of 5 years, that the copse may grow:" And the trees so standing shall continue to be the property of the person to whom they belonged before said registry; and the clerk of the peace shall keep the said notice, map, and affidavit, on the same file with the affidavits of trees registered by virtue of this act, and enter the same in an alphabetical book; for filing which notice, and map, and affidavit of such enclosure, alphabetizing the same, and making and attesting a copy thereof, the clerk of the peace shall receive 1s., and for a copy of the notice and affidavit given at any time after, 6d. each; and to which notice, &c., any person may resort at any quarter sessions for said county; and such clerk of the peace shall read in open court, at every quarter sessions, all affidavits of enclosures made as aforesaid, which shall have been lodged with him since the preceding general quarter sessions, under the penalty of 20s. for every omission to be recovered by civil bill, by any person who shall sue for the same, within 12 calendar months after the quarter sessions at which he ought to have publicly read such affidavit.

s. 6.

*Mode of avoid-
ing fraudulent
registries.*

By s. 6. any person under whom the lands shall be held mediately or immediately, whereon the trees registered or enclosure registered in pursuance of this act may be, who shall think himself aggrieved by a fraudulent registry, may apply to the justices of said county, at any time within 12 months after such registry, (or if he be
a minor

a minor at the time of registering, within 12 months after he shall arrive at the age of 21) which justices, on receiving a petition complaining of a fraudulent registry, and also an affidavit that notice of such intended complaint had been served on the tenant 21 days before such quarter sessions, shall cause a jury to be impanelled, who shall decide whether the registry be a true registry or not; and if they shall find it to be a false registry, then the same shall be deemed void; but if they shall find for the tenant, then the registry shall be deemed good, and their verdict in both cases conclusive.

By s. 7. any tenant may sell his right in said trees or coppices, or any part of the same, to any person under

Tenant may sell his right to trees to landlord.

s. 7.

whom he may derive mediately or immediately; and such person shall have all rights and privileges therein by this act secured to said tenant. But by s. 8. no sale or transfer shall be good, unless and until the same be done in

s. 8.

writing, and signed by the tenant with his name or mark, attested by 2 witnesses, and an attested copy of said writing or instrument lodged with the clerk of the peace, in open court, at some quarter sessions for the county, or county of a city, having been first proved to be a true copy by some credible witnesses upon oath before the justices at said sessions; which copy the clerk of the peace shall keep on the same file with the affidavits in this act mentioned, and alphabet the same in the same book, for which he shall receive from the purchaser 1s.; and to said book and affidavit all persons shall have access at any time, paying 6d.; and an attested copy of such writing, &c., signed by the acting clerk of the peace, shall be evidence of the due registry of such writing; and such copy the clerk of the peace shall be obliged to give on receiving 6d.: And any clerk of the peace refusing to give such copy within 3 days after it shall be demanded, shall forfeit £5, to be recovered by civil bill, by any one who shall sue for the same within 6 months. And if the head or principal landlord shall purchase the said trees or coppices from an under-tenant, having a right to sell the same, then, from the registry of the sale as aforesaid, the said trees shall belong to said landlord as if they were his own original right or royalty, not-

How such sale shall be.

withstanding

s. 9.

*Damages by
tenant cutting,
how assessed.*

withstanding any intermediate term that may exist between the term of the under-tenant, and the estate of the landlord. By s. 9. when the term of the tenant entitled to the property of the trees by this act, shall be for life, or uncertain, the said tenant shall have liberty, for one year after the expiration of his lease, to enter upon said lands, and to cut, carry away, and dispose of said trees, making such compensation for damages incurred by so doing, as shall be awarded by 2 of the neighbours, who shall be appointed by the next residing justice of peace for the county, by an order under his hand, and which 2 neighbours shall, in case of difference between them, call in a third. This act provides (s. 10.) that if

s. 10.

*Reversioners
may oblige
tenants to sell to
them.*

any person entitled to the reversion or inheritance of the said lands, mediately or immediately, shall be inclined to purchase said trees, such person may at any time within 6 calendar months, serve a notice in writing to said tenant to desist from cutting said trees, who shall thereupon desist; and the persons so entitled may apply by petition to the justices at some quarter sessions for said county, or county of a city, setting forth his title, and his intention to purchase said trees, and upon said petition received, and proof made to said justices that notice was duly served on said tenant, 21 days before the quarter sessions, of the landlord's intention to apply as aforesaid, then said justices shall, (either at said quarter sessions, or at the next ensuing, at their discretion,) cause a jury to be impannelled, to try and determine the value of said trees, allowing for the expense of felling them, and for the damage that would be incurred by so doing; and the justices shall, on receiving the verdict, immediately declare in open court, the sum to be paid by the inheritor or reversioner for said trees; and if said reversioner, &c., shall not pay to the said tenant, or to his representative, the sum so awarded, or lodge the same with the county treasurer for the use of the tenant, or his representative, at or before the next general quarter sessions, then the justices at said next quarter sessions shall declare in open court, that the said trees are the property of said tenant, or his representative; and

*Value, how
ascertained.*

the

the same shall have power to enter upon said lands, and to cut and take away said trees during 6 months then next ensuing, between sun-rise and sun-set, without paying compensation for any damage he shall do, unless he shall commit wanton and unnecessary damage, upon affidavit whereof the next resident justice shall cause such wanton damage to be valued by 2 neighbours, who in case of difference shall call in a third. And if there shall be more than one claiming to become purchasers of said trees, at the proper time of claiming as aforesaid, the justices at said sessions shall, in a summary way, decide which claimant shall be preferred, preferring the more remote inheritor or reversioner to the more immediate. By s. 11. if any tenant or his representative, entitled to cut down trees as aforesaid, shall sell his right to the same to any reversioner or inheritor by private bargain, and that said sale shall be registered, as prescribed in this act, within the 6 months during which he has a right to cut said trees, then said trees shall be deemed the property of the purchaser: and the fees to be taken by the clerk of the peace for filing and entering every petition shall be 6*d.*; and for filing and copying every affidavit, 6*d.*; and for registering a sale of trees, 6*d.* And it is declared by s. 12. that the surrender of any lease for years, or for a life or lives, of any lands to any body corporate, ecclesiastical or lay, for the purpose of taking a new lease thereof, shall not be considered as an expiration of the term surrendered, so far as respects this act, but that every renewal shall be considered as a further continuance of the original term, and the tenant shall enjoy all benefit of planting given by this act, as fully as if the additional term of years, or the additional lives, had been contained in his original lease. By s. 21. this act shall not extend to trees planted in pursuance of any covenant contained in any lease, nor to affect or invalidate any such covenant. Nor, by s. 22., shall it extend to tenants evicted for non-payment of rent. These several statutes passed in Ireland for the encouragement of planting, seem to be peculiar to this country; no statute

s. 11.

Sale by private bargain.

s. 12.

Surrender no expiration of lease.

s. 21.

Proviso.

s. 22.

tute in England having given to tenants for life, the property in trees which they shall plant.

*Right of clergy
to emblements.*

28 Hen. 8.
c. 11. s. 6.
Eng.

With respect to the right to emblements, which is another incident to estates for life, the 28 Hen. 8. c. 11. s. 6. Eng. provides, that in case any incumbent shall happen to die, who hath caused any of his glebe lands to be manured and sown, at his proper costs and charges, with any corn or grain; in that case, such incumbent may make and declare his testament of all the profits of the corn growing upon the glebe lands so manured and sown. I do not find that the right of the parochial clergy in Ireland to emblements is declared by any Irish statute.

*Freehold rents
recovered by ex-
ecutors of tenant
for life.*

11 Geo. 2.
c. 19. s. 15.
Eng.

As to the under-tenants or lessees of tenants for life, the 11 Geo. 2. c. 19. s. 15. Eng. recites, that where any lessor or landlord having only an estate for life in the lands, &c., demised, happens to die before or on the day on which any rent is reserved or made payable, such rent, or any part thereof, is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion entitled thereto, any other than for the use and occupation of such lands, &c., from the death of the tenant for life; and for remedy thereof enacts, that where any tenant for life shall die before or on the day on which any rent was reserved or made payable, upon any demise or lease of any lands, &c., which determined on the death of such tenant for life, the executors or administrators of such tenant for life may recover in an action on the case, from any such under-tenant, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due, making all just allowances, or a proportionable part thereof respectively. The 23 & 24 Geo. 3. c. 46.

*And rent appor-
tioned in case of
the death of such
landlord before
gale day.*

23 & 24 Geo. 3.
c. 46. s. 1. Ir.

s. 1. Ir. is nearly corresponding, which provides, that where any tenant for life shall die before or on the day, on which any rent was reserved or made payable, upon any demise or lease of any lands, &c., which shall determine on the death of such tenant for life, the executors, administrators,

administrators, or assigns of such tenant for life, may either by action of debt, or action on the case, as for the use and occupation of the said lands, &c., recover from the tenant or under-tenant thereof, if such tenant for life shall die on the day on which the said rent was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, half year, quarter of a year, or other time in which the said rent was growing due, making all just allowances, or a proportionable part thereof respectively; and that it shall be lawful for the executors, &c., of such tenant for life, to distrain for such rent, or proportionable rent, as fully as such tenant for life, or his assigns, might have done, if such tenant for life had out-lived the day on which the said rent was made payable. And by s. 2. (which provides for a case not adverted to by the 11 Geo. 2. c. 19. Eng.) where any person seised of an estate in fee, or of a lesser estate of freehold, in any lands, &c., shall have demised the same for one or more life or lives, and such demise shall determine by the death or failure of such life or lives, before the day on which the rent is made payable, the person making such demise shall recover from the tenant, or under-tenant, of said lands, &c., or their respective heirs, executors, administrators, or assigns, either by action of debt, or by action on the case, as for the use and occupation of the said lands, &c., a proportionable part of such rent according to the time such life or lives was or were in being of the last year, half year, quarter of a year, or other time in which the said rent was growing due, making all just allowances, or a proportionable part thereof, respectively; or the person making such demise may distrain for such proportionable part of the said rent, as fully as he might have done for the whole of such rent, if the life or lives, by the failure of whom such demise was determined, had been in full life.

The 19 Car. 2. c. 6. Eng. may be also referred to this place, which is intituled an act for redress of inconveniences by want of proof of the deceases of persons beyond the seas, or absenting themselves, upon whose lives

estates

s. 2.

Rent apportioned in case of death of cestui que vie before gale day.

Evidence of the death of cestui que vies supplied.

19 Car. 2. c. 6. Eng.

estates do depend; and recites (*inter alia*) that divers lords of manors, and others, have used to grant estates [by copy of court-roll for one, two, or more life or lives, according to the custom of their several manors; and have also granted estates] by lease for one or more life or lives, or else for years determinable upon one or more life or lives; and provides that if such person for whose life any such estate shall be so granted, shall remain beyond the seas, or elsewhere absent himself in the realm, by the space of 7 years together, and no sufficient and evident proof be made of the life of such person, in any action commenced for the recovery of such tenements by the lessor or reversioner, his heirs or assigns; the judges before whom such action shall be brought, shall direct the jury to give their verdict as if the person so remaining beyond the seas, or otherwise absenting himself, were dead. And by s. 3. in any such action wherein the life or death of any such person shall come in question, between the lessor or reversioner and the tenant in possession, the lessor or reversioner may take exception to any of the jurors returned, that the greatest part of the real estate of any such juror is held by lease, [or copy,] for lives; who upon proof thereof shall be set aside as in case of other legal challenges. But it is provided, (s. 5.) that if any person shall be evicted out of any lands or tenements by virtue of this act, and afterwards such person upon whose life such estate depended, shall return from beyond the seas, or shall, on proof in any action to be brought for recovery of the same, be made appear to be living, or to have been living at the time of the eviction; then the tenant or lessee who was outed of the same, his executors, administrators, or assigns, may re-enter and enjoy the said lands, &c., in his former estate during the life or lives, or so long term as the said person, upon whose life the said estate depended, shall be living; and shall upon action to be brought by him against the lessor, reversioner, or tenant in possession, or other person, who since the said eviction received the profits of the said lands, &c., recover, for damages, the full profits of said lands, with lawful interest for and from the time that he was so kept out of said lands,

lands, &c., as well in the case when the person upon whose life such estate did depend shall be dead at the time of bringing said action, as if the said person were then living. The 7 W. 3. c. 8. Ir. is very nearly a transcript of this English act; save that so much of the 19 Car. 2. as relates to copyhold tenants is omitted in the latter; and that the clause of the 7 W. 3. which corresponds in substance with the 2d section of the 19 Car. 2., is more concisely worded.

II. As to *tenants by the curtesy of England*: By stat. § 2. *de tenent. per legem Angliæ incert. temp.*: When a man receives land with his wife in marriage, if he have of the same wife an heir, son or daughter, crying, heard within the four walls, if the husband survive the wife, whether the heir live or not, the marriage shall remain to the husband, and after his death revert to the donor or his heir. The ordinance of king Henry III. by which this species of estate, obtains in Ireland, may be here stated, not only as a very ancient and curious record, but as one in which, as Sir Martin Wright observes, the description of this estate is with greater authority, and much better expressed, than in Glanvil, which contains the oldest description of it extant. *Henrici Rex, &c., Baronibus, militibus, et aliis liberis tenentibus Lageniæ, salutem, &c. Satis ut credimus vestra auditit discretio, quod cum bonæ memoriæ Johannes, quondam rex Angliæ, pater noster, venit in Hiberniam, ipse duxit secum viros discretos et legis peritos, quorum communi consilio, et ad instantiam Hiberniensium, statuit et precepit leges Anglicanas teneri in Hibernia, ita quod leges easdem in scripto redactas reliquit sub sigillo suo ad scaccar: Dublin. Cum igitur consuetudo et lex Angliæ fuerit, quod si aliquis desponsaverit aliquam mulierem, sive viduam, sive aliam hereditatem habentem, et ipse postmodum ex ea prolem suscitaverit, cujus clamor auditus fuerit intra quatuor parietes, idem vir, si supervixerit ipsam uxorem suam, habebit tota vita sua custodiam hæreditatis uxoris suæ, licet ea forte habuerit hæredem de primo viro suo qui fuerit plenæ ætatis; vobis mandamus injungentes, quatenus in loquela quæ est in curia Willi. Com. Mares. inter Mauritium Fitz Gerald*
Potent.

Tenants by the curtesy of England:

And of Ireland.

*Potent. et Galfridum de Marisco nostrum Hiberniæ tenentem, vel in alia loquela quæ fuerit in casu prædicto, nullo modo justitiam in contrarium facere præsumatis. Teste rege apud Westm. 10 Decemb. anno 11^o. regni nostri.**

§ 3.

Assignment of
dower.

9 Hen. 3. c. 7.
E. & I.

6 Edw. 1. c. 7.
E. & I.

Forfeiture of
dower.

13 Edw. 1. st. 1.
c. 34. E. & I.

Dower barred
by jointure.

27 Hen. 8.
c. 10. s. 6. Eng.

III. Next as to *tenant in dower*: By the great charter 9 Hen. 3. c. 7. E. & I. a widow shall without difficulty have her marriage and her inheritance, and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband; and she shall tarry in the chief house of her husband 40 days; within which days her dower shall be assigned; and if the house be a castle, a convenient house shall be assigned her; and she shall have in the mean time her reasonable estovers; and for her dower shall be assigned the third part of all the lands of her husband, which were his during coverture; except she were endowed of less at the church door. But by the 6 Edw. 1. c. 7. E. & I. if a woman sell or give in fee, or for term of life, the land that she holdeth in dower, the heir, or other to whom the land ought to revert after the death of such woman, shall have present recovery to demand the land by a writ of entry made thereof in chancery. And by the 13 Edw. 1. st. 1. c. 34. E. & I. if a wife willingly leave her husband and go away, and continue with her adulterer, she shall be barred for ever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coercion of the church, reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action. The statutes which provide remedies for cases of deforcement of dower, as also those which relate to the forfeiture of dower in criminal cases, belong to other parts of this digest, and are therefore omitted in this place.

As to barring dower by jointures: the 27 Hen. 8. c. 10. s. 6. Eng. enacts, that where any estate or purchase shall be

* I have transcribed this from Sir M. Hale's History of the Common Law, chap. 9.

be made of any lands, &c., to the husband and wife, and to the heirs of the husband, or to them and the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten; or to the husband and wife for the term of their lives, or for the life of the wife; or to any other person or persons, and to their heirs and assigns, to the use of the husband and wife, or to the use of the wife, as before rehearsed, for the jointure of the wife; in every such case, every woman married, having such jointure made, shall not have any dower of the residue of the lands, &c., that at any time were her said husband's, nor shall claim her dower against them that have the lands and inheritances of her said husband. But by s. 7. if any woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without fraud or covin, by lawful entry, action, or by discontinuance of her husband, then she shall be endowed of as much of the residue of her husband's lands, &c., whereof she was before dowable, as the lands, &c. so evicted shall amount to. And this act provides (s. 9.) that if any wife shall have any lands, &c., given and assured unto her after marriage, for term of her life, or otherwise in jointure, and the said wife over-live her said husband, she shall be at liberty, after his death, to refuse the lands, &c., so assured to her during coverture, except such assurance shall be made by act of Parliament, and thereupon to demand and take her dower, by writ of dower or otherwise, according to the common law, of and in all such lands, &c., as her husband stood seised of any estate of inheritance at any time during the coverture. The 10 Car. 1. st. 2. c. 1. Ir. is the corresponding statute in Ireland.

s. 7.

s. 9.

10 Car. 1.
st. 2. c. 1. Ir.

CHAP.

CHAP. V.

*Of Estates less than Freehold.**Leap year.*51 Hen. 3.
st. 1. E. & I.24 Geo. 2.
c. 23. Eng.*Alteration of the
old stile.*

I SHALL follow Sir W. Blackstone in referring to this place the statutes respecting the computation of time, as connected with the duration of estates for years. By the statute *de anno bissextili*, 51 Hen. 3. st. 1. E. & I. it is enacted, that the day increasing, in the leap year shall be reckoned of the same month wherein it groweth; and that day and the next preceding day shall be accounted for one day. And for regulating the commencement of the year, and correcting the calendar, the 24 Geo. 2. c. 23. Eng. after reciting that the legal supputation of the year by which the year used to commence on the 25th March, was attended with divers inconveniencies as differing from the usage of neighbouring nations, and from the method of computation in Scotland; and further reciting that the Julian calendar (then in use) was discovered to be erroneous, by means whereof the vernal or spring equinox, which at the time of the general council of Nice in the year 325, happened on or about the 21st day of March, now happens on the 9th or 10th day of the same month; and the said error, if not remedied, would in process of time occasion the several equinoxes and solstices to fall at very different times in the civil year from what they formerly did; therefore enacts, that throughout all the king's dominions in Europe, Asia, Africa, and America, the supputation according to which the year beginneth on the 25th March shall be no longer used, and the 1st day of January next following the last day of December, 1751, shall be deemed the first day of the year 1752; and that each new year shall accordingly commence from the 1st day of every month of January next preceding the 25th day of March on which such year would according

ing to the present supputation have commenced; and that from the 1st January, 1752, the several days in each month shall be reckoned in the same order; and the feast of Easter, and other moveable feasts thereon depending, shall be ascertained according to the method they then were, until the 2d September, 1752; and that the natural day next immediately following the said 2d day of September, shall be called and accounted the 14th day of September; omitting for that time only the eleven intermediate nominal days of the common calendar; and the natural days following the said 14th of September shall be numbered forwards in numerical order from the said 14th of September, according to the order now used in the present calendar; and all acts, deeds, writings, notes and other instruments, executed or signed upon or after the 1st January, 1752, shall bear date according to the said new method of supputation; and the two fixed terms of St. Hilary and St. Michael in England, &c., and the courts of great sessions in the counties palatine, and in Wales, and the courts of the general quarter sessions and general sessions of the peace, and all other courts, and all meetings of any bodies politic, which by law or usage within this kingdom, &c., are to be holden on any fixed day of any month, or on any day depending on any certain day of any month, (except such courts as are usually holden with fairs or marts,) shall after the said 2d of September be holden upon the same respective nominal days whereon the same are now holden, but which shall be computed according to the new method. And by s. 2. the years 1800, 1900, 2100, 2200, 2300, or any other hundredth year of our Lord except only every fourth hundredth year whereof the year 2000 shall be the first, shall not be bissextile or leap years, but shall be common years consisting of 365 days; and the years of our Lord 2000, 2400, 2800, and every other fourth hundredth year of our Lord from the year 2000 inclusive, and all other years which by the present supputation are bissextile or leap years, shall be bissextile or leap years, consisting of 366 days. By s. 3. the feast of Easter, or any of the moveable feasts thereon depending, shall be no longer observed in England, or the dominions belonging to the crown of Great

s. 2.

s. 3.

Britain, according to the method of supputation now used, or the table prefixed to the book of common prayer; and the said table, and also the column of golden numbers as they are now prefixed to the respective days of the month, shall be left out in all future editions of the book of common prayer; and the new calendar table and rules hereunto annexed shall be prefixed to all future editions of the said book. And all the fixed feast-days, holy-days and fast-days, now observed by the Church of England, and also the several solemn days of thanksgiving, and of fasting and humiliation, which by virtue of any act of parliament now in being are to be observed, shall be observed on the respective days marked for the celebration of the same in the new calendar; that is to say on the same nominal days on which they are now observed, but which according to the alteration by this act made will happen 11 days sooner than they now do. And the feast of Easter, and all other moveable feasts thereon depending, shall be observed according to the new calendar, tables, and rules hereunto annexed, in England, and the dominions aforesaid, wherein the liturgy of the church of England now is, or hereafter shall be used: and the two moveable terms of Easter and Trinity, and all courts, and all meetings of any bodies politic, and all markets, fairs and marts, and courts thereunto belonging, which are used to be holden at any moveable times depending upon Easter, or any other moveable feast, shall be holden on such days whereon the same happen according to the falling of Easter, or such other moveable feasts, to be computed according to the new calendar. And by s. 4. the meetings of the court of session, and terms fixed for the court of Exchequer in Scotland, (the April meeting of the governor, bailiffs, and commonalty of the company of conservators of the great level of the fens) and the holding of all markets, fairs, and marts, either fixed to certain nominal days of the month, or depending upon the beginning or any certain day of any month, and all courts belonging to such fairs or marts, shall not be continued according to the nominal days of the month, computed according to the new calendar, but shall

s. 4.

Old stile continued in certain cases.

shall be holden upon or according to the same natural days, according to which they should have been holden in case this act had not been made. And by s. 5. this act shall not accelerate the days for opening, enclosing, or shutting up any lands for common of pasture and other purposes, or the days on which any temporary or distinct right in any lands is to commence. Nor by s. 6. shall this act accelerate the time of payment of any rent, annuity, or sum payable by virtue of any custom, deed, or agreement, or of any act of parliament made before the said 14th day of September, or the time of doing any thing directed by any such act; or accelerate the payment of, or increase the interest of any sum payable as aforesaid; or accelerate the time of the delivery of any goods or other things; or the time of the commencement or determination of any lease of lands, &c., or of any other agreement, or of the accepting, surrendering, or delivering up possession of any lands, &c.; or the commencement or determination of any annuity or rent, or of any grant for any term of years; or the time of attaining of 21 years, or any other age requisite by any law, custom, deed, will, or writing, by any person born before the said 14th of September; or the time of the expiration of any apprenticeship or other service. The 25 Geo. 2. c. 30. s. 2. Eng. provides, that the time for opening, using, enclosing and shutting up lands and grounds used for common of pasture or other purposes, for the paying of rents or other payments, and for the doing of other things, if such times are depending on any moveable feast, shall be computed according to the new calendar. But by s. 3. this act shall not abridge, enlarge, confirm, or alter the title of any person, or any body politic, to any such lands, except as to the new computation of time when the enjoyment of such right shall commence. All such statutes made in England as concern the stile and calendar, are adopted in Ireland by the 21 & 22 Geo. 3. c. 48. s. 3. Ir.

s. 5.

s. 6.

25 Geo. 2.
c. 30. s. 2.
Eng.New stile to be
used in certain
cases.

s. 3.

21 & 22 Geo. 3.
c. 48. s. 3. Ir.

II. The statutes which respect *overholding tenants* belong properly to this chapter. By the 4 Geo. 2. c. 28. s. 1. Eng. in case any tenant for term of life, lives, or years,

§ 2.

Remedy against
over-holding
tenants.4 Geo. 2. c. 28.
s. 1. Eng.

years, or other person who shall come into possession of any lands, &c., by, from, or under, or by collusion with any such tenant, shall wilfully hold over any lands, &c., after the determination of such term, and after demand made, and notice in writing given, for delivering the possession thereof by his landlord or lessor, [*or the person to whom the remainder or reversion of such lands, &c., shall belong,] or his agent lawfully authorized, then such person shall, for and during the time he shall so hold over, or keep the person entitled out of possession, pay to the person so kept out, his executors, administrators, or assigns,† at the rate of double the yearly value of the lands, &c., so detained, for so long time as the same are detained, to be recovered in any court of record, by action of debt,‡ whereunto the defendant shall be obliged to give special bail; against the recovering of which penalty there shall be no relief in equity. This clause appears to be taken from the 11 Ann. c. 2. s. 1. Ir. with such variations as are noted in the margin. And

11 Geo. 2. c. 19. s. 18. Eng.
15 Geo. 2. c. 8. s. 9. Ir.

Remedy against tenants giving notice to quit, and not delivering possession.

the 11 Geo. 2. c. 19. s. 18. Eng. recites, that great inconveniencies may happen to landlords, whose tenants may have power to determine their leases, by giving notice to quit the premises by them holden, and yet refusing to deliver up the possession, when the landlord hath agreed with another tenant for the same; and therefore enacts, that in case any tenant|| shall give notice§ of his intention to quit the premises by him holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at such time, then such tenant, his executors, or administrators, shall from thenceforward pay to the landlord or lessor double the rent or sum which he should otherwise have paid; to be sued for, levied, and recovered at the same times, and in the same manner,

* Those words not in 11 Ann. c. 2. Ir.

† "Or to such person to whom the immediate reversion expectant upon the determination of such lease shall belong," here added in the 11 Ann. c. 2.

‡ "Or trespass" added in the 11 Ann. c. 2.

|| "Having power to determine their leases by giving notice to quit, &c.," added here in 15 Geo. 2. c. 8. Ir.

§ "In writing," by the 15 Geo. 2. c. 8. Ir.

manner, as the single rent or sum, before the giving such notice, could be levied, &c.; and such double rent shall continue to be paid during all the time such tenant shall continue in possession as aforesaid. The 15 Geo. 2. c. 8. Ir. contains a similar clause, (s. 9.) but with such deviation as stated in the margin, as to the notice by the tenant being required to be in writing.

CHAP. VI.

Of Estates upon Condition.

THE provisions of the several statutes which regard the jurisdiction of the courts of equity in respect to mortgages, I shall reserve for a subsequent part of this work; but so much of the 7 Geo. 2. c. 20. Eng. as relates to the redemption of mortgages in the courts of law, is proper for this place. This statute recites, that mortgagees frequently bring actions of ejectment for the recovery of lands and estates to them mortgaged, and bring actions on bonds given by mortgagors to pay the money secured by such mortgages, and for performing the covenants therein contained, and likewise commence suits in courts of equity to foreclose their mortgagors from redeeming their estates; and the courts of law, where such ejectments are brought, have not power to compel such mortgagees to accept the principal monies and interests due on such mortgages, and costs, or to stay such mortgages

Redemption of mortgages in the courts of law.
7 Geo. 2. c. 20. s. 1. Eng.

gagees from proceeding to judgment and execution in such actions, but such mortgagors must have recourse to a court of equity for that purpose; in which case likewise the courts of equity do not give relief until the hearing of the cause; and therefore enacts, that where any action shall be brought in any court of record at Westminster, [or in the court of great sessions in Wales, or in any of the superior courts in the counties palatine,] on any bond for the payment of money secured by mortgage, or performance of the covenants therein contained; or where any ejectment shall be brought by any mortgagee, and no suit shall be depending in equity for foreclosing or redeeming such mortgaged lands, &c.; if the person having right to redeem and who shall appear and become defendant, shall, pending such action, pay unto such mortgagee, or, in case of refusal, bring into court the principal and interest due on such mortgage, and all such costs as have been expended in any suits at law or equity upon such mortgage, (such principal, interest, and costs, to be ascertained by the court where such action is depending, or by the proper officer by such court to be appointed,) the monies paid to such mortgagee, or brought into such court, shall be in satisfaction of such mortgage; and the court shall discharge such mortgagor or defendant from the same, and shall by rule of court compel such mortgagee, at the costs of such mortgagor, to re-convey such mortgaged lands, and deliver up all writings in his custody relating to the title. But by s. 3. this act shall not extend to any case where the persons against whom redemption shall be prayed, shall, (by writing delivered, before the money shall be brought into court, to the attorney or solicitor for the other side) insist, either that the party praying redemption has not a right to redeem, or that the premises are chargeable with other sums than what appear on the face of the mortgage; nor to any case where the right of redemption shall be controverted between different defendants; nor be any prejudice to subsequent mortgagees or incumbrancers. No statute in Ireland has provided in

in a similar manner for the more easy redemption of mortgages.

The statutes which respect the mode of acknowledging or becoming bound by the securities for money called statute merchant, and statute staple, or the recognizance in the nature of a statute staple, as well as the nature of the executions to be issued thereon, will be found in the chapters which treat of other recognizances and executions. And the statute of Westm. 2. by authority of which the estate by *elegit* is acquired, seems also to be more properly referable to the chapter concerning executions.

CHAP. VII.

Of Estates in Possession, Remainder, and Reversion.

BY the 10 & 11 W. 3. c. 16. Eng. where any estate shall, by marriage or other settlement, be limited in remainder to, or to the use of, the first or other son or sons of the body of any person lawfully begotten,* with remainder over to, or to the use of, any other person; or in remainder to, or to the use of, a daughter or daughters lawfully begotten, with remainder to any other person; any son or daughter of such person, born after the decease of the father, may take such estate, in the same manner as if born in the life-time of the father, although no estate be limited to trustees, after the decease of the father, to preserve the contingent remainder to such after-born

Posthumous children may take as if born in father's life-time.

10 & 11 W. 3. c. 16. Eng.

8 Ann. c. 4. Ir.

* "or to be begotten" added here in 8 Ann. c. 4. Ir.

born sons or daughters. The 8 Ann. c. 4. Ir. is the corresponding statute in Ireland.

Remedy in cases of persons pretended to be alive to the prejudice of remainder-man, &c.

6 Ann. c. 18.
s. 1. Eng.

For the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths, the 6 Ann. c. 18. s. 1. Eng. provides, that any person who shall have any claim to any remainder, reversion, or expectancy in any estate, after the death of any person within age, married woman, or other person, upon affidavit made in chancery, by the person claiming such estate, of his title, and that he hath cause to believe that such minor, married woman, or other person, is dead, and that the death is concealed, may once a year move the Lord Chancellor to order such guardian, trustee, husband, or other person suspected to conceal such person, to produce to such persons (not exceeding 2) as shall be named in such order by the party prosecuting such order, such minor, &c.; and if such guardian, &c., shall neglect or refuse to produce such infant, &c., on whose life such estate doth depend, according to the directions of this order, the court of chancery shall order such guardian, &c., to produce such minor, &c., in court, or before commissioners, as the court shall direct, two of which commissioners shall be nominated by the party prosecuting; and in case such guardian, &c., shall neglect, &c., to produce such infant, &c., in court, or before such commissioners, whereof return shall be made by such commissioners, and filed in the petty bag office, the said minor, &c., so concealed, shall be taken to be dead, and it shall be lawful for any person claiming title after the death of such infant, &c., to enter upon such lands as if such infant, &c., were dead. And by s. 2. if it shall appear to the court by affidavit, that such minor, &c., for whose life such estate is holden, is at some certain place beyond the seas, it shall be lawful for the party prosecuting such order, to send over, at his own costs, the persons appointed by said order to view such minor, &c.; and in case such guardian, &c., shall neglect, &c., to produce to such persons a personal view of such infant, &c., such persons shall make a return of such neglect, which shall be filed in the petty bag, and thereupon such minor, &c., shall be taken

taken to be dead, &c. And by s. 3. if it shall afterwards appear upon proof in any action, that such infant, &c., were alive at the time of such order made, such infant, &c., or other person having any estate determinable upon such life, may re-enter upon said lands, and maintain an action against those who received the profits, or their executors or administrators, and therein recover damages for the profits received. By s. 4. if such guardian, &c., holding or having any estate determinable upon the life of any other person, shall to the satisfaction of the court make appear, that they have used their utmost endeavours to procure such infant, &c., to appear in court or elsewhere, according to the order; and that they cannot procure such infant, &c., to appear, and that such infant, &c., were living at the time of such return made and filed; such person may continue in possession of such estate, as if this act had not been made. And by s. 5. every person who is guardian or trustee for any infant, and every husband seised in right of his wife, and every other person having any estate determinable upon any life, who after the determination of such particular estates, without the express consent of them who are next entitled upon the determination of such particular estates, shall hold over and continue in possession of any lands, shall be adjudged trespassers; and every person, his executors and administrators, who shall be entitled to such lands upon the determination of such particular estates, shall recover in damages against every person so holding over, and against his executors or administrators, the value of the profits received during such wrongful possession. This statute has remained without adoption in Ireland.

s. 3.

s. 4.

s. 5.

In analogy to the principle of law which restrains the limitations of remainders, and executory devises, within certain bounds, so as to avoid perpetuities, which the law abhors; the 40 Geo. 3. c. 98. Eng. provides, that no person shall by any deed, surrender, will, codicil, or otherwise, settle or dispose of any real or personal property, in such manner that the *rents, issues, profits, or produce* thereof, shall be wholly or partially accumulated for

Limitation of rents, &c. restrained so as to avoid perpetuities.

40 Geo. 3. c. 98. Eng.

for any longer time than the life or lives of the grantor or grantors, settler or settlers; or the term of 21 years from the death of such grantor, settler, deviser, or testator; or during the minority or minorities of any person or persons who shall be living, or in *ventre sa mere* at the time of the death of such grantor, &c.; or during the minority or minorities of any person or persons who, under the uses or trusts of the deed, &c., directing such accumulations, would, for the time being, if of full age, be entitled to the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated; and where any accumulation shall be directed otherwise than as aforesaid, such direction shall be void, and the rents, &c., shall go to, and be received by, such person as would have been entitled thereto if such accumulation had not been directed. But by s. 2. this act shall not extend to any provision for payment of debts of any grantor, &c., or for raising portions for any child of such grantor, &c., or any child of any person taking any interest under any such conveyance, settlement, or devise; or to any direction touching the produce of timber or wood, upon any lands or tenements: Nor by s. 3. shall this act extend to any disposition respecting heretable property in Scotland. By s. 4. the restrictions in this act shall take effect with respect to wills made before the passing of this act (July 28, 1800) in such cases only where the deviser or testator shall be living, and of sound and disposing mind, after the expiration of 12 calendar months from the passing of this act. This statute has not been extended to Ireland.

CHAP. VIII.

Of Estates in Severalty, Joint-tenancy, Coparcenary, and Common.

BY the 31 Hen. 8. c. 1. s. 2. Eng. all joint-tenants, and tenants in common, of any estates of inheritance, in their own rights, or in right of their wives, shall be compelled to make partition by writ *de participatione facienda*, to be devised in chancery, in like manner as coparceners by the common law. And by s. 3. every of the said joint-tenants, or tenants in common, and their heirs, after partition made, shall have aid of the other to deraign the warranty paramount, and to recover for the rate, as is used between coparceners. The 32 Hen. 8. c. 32. Eng. further provides, that joint-tenants and tenants in common, for term of life or years, or where one of them shall have an estate for life or years with the other that shall have an estate of inheritance or freehold in any lands, &c., shall be compellable by writ of partition out of chancery, upon their case, to make partition. But by s. 3. no partition to be made by force of this act, shall be prejudicial to any persons, their heirs or successors, other than such as be parties* to the partition, their executors or assigns. The 33 Hen. 8. st. 1. c. 10. Ir. incorporates both these statutes. But a new method of proceeding on the writ of partition is chalked out and provided by the 8 & 9 W. 3. c. 31. Eng. which enacts, that after process of *pone* or attachment returned upon a writ of partition, affidavit being made of due notice given of the writ to the tenant to the action, and a copy thereof left with the occupier or tenant, or if they cannot be found, to the wife, son or daughter, (being of the age of 21 years) of the tenant, or to the tenant in possession,

Joint-tenants, &c., compellable to make partition of estates of Inheritance.

31 Hen. 8. c. 1. s. 2. Eng.

s. 2.

32 Hen. 8. c. 32. Eng.

And of estates for life or years.

s. 3.

* "or privy" added in 33 Hen. 8. st. 1. c. 10. Ir.

8 & 9 W. 3. c. 31. Eng.

Mode of proceeding on writ of partition.

possession, (unless the said tenant in possession be demandant in the action) at least 40 days before return of the *pone* or attachment; if the tenants to such writ, or any of them, or the true tenant to the lands, &c., shall not within 15 days after the return of such *pone* or attachment, cause an appearance to be entered, the demandant having entered his declaration, the court may proceed to examine the demandant's title, and quantity of his purpart, and according as they shall find his right, &c. shall for so much give judgment by default, and award a writ to make partition, whereby such purpart may be set out severally; which being executed after 8 days notice given to the occupier or tenants, and returned, and final judgment entered, the same shall conclude all persons concerned, though not named in the proceedings, nor the title of the tenants truly set forth. But by s. 2. if such tenant or person concerned, shall, within one year after the first judgment entered, or in case of infancy, coverture, *non sanæ memoriæ*, or absence out of the kingdom, within one year after their return, or the determination of such inability, apply to the court by motion, and shew a good and probable matter in bar of such partition, or that the demandant hath not title to so much as he hath so recovered, the court may suspend or set aside such judgment, and admit the tenant to appear and plead: and if the court upon hearing thereof, shall adjudge for the first demandant, the first judgment shall stand confirmed against all persons, except such other persons as shall be absent or disabled; and the person so appealing shall be awarded to pay costs: or if within such time aforesaid, the tenants or persons concerned, admitting the demandant's title and purparts, shall shew to the court any inequality in the partition, the court may award a new partition to be made in presence of all parties, if they will appear; which second partition being returned and filed shall be good against all persons, except as before. By s. 3. no plea in abatement shall be received in any suit for partition, nor shall the same be abated by the death of any tenant. By s. 4. when the high sheriff by reason of distance, infirmity, or hindrance, cannot conveniently be present at the

s. 2.

s. 3.

s. 4.

the execution of any judgment in partition, the under-sheriff, in presence of 2 justices of peace, &c., may proceed to execution by inquisition; and the high sheriff thereupon shall make the same return as if he were personally present: and the tenants of the lands shall be tenants for such part set out severally to the respective landlords or owners, under the same conditions, rents, and reservations; and the owners of the several purparts shall make good unto their respective tenants the said parts severally, as they were bound to do before partition made: and in case any demandant be tenant in possession to the tenant to the action, the said tenant shall stand possessed of the said purpart for the like term, and under the same conditions and covenants, when set out in severalty. And by s. 5. the sheriffs, their under-sheriffs and deputies, and in case of sickness or disability in the high sheriff, all justices of peace, &c., shall give due attendance to the executing such writ of partition, (unless reasonable cause be shewn to the court upon oath) or otherwise be liable to pay to the demandant such costs and damages as shall be awarded by the court, not exceeding £5, for which the demandant may bring his action, &c., in any of his majesty's courts at *Westminster*. And in case the demandant doth not agree to pay to the sheriffs or under-sheriffs, justices and jurors, such fees as they shall demand, the court shall award what each person shall receive, having respect to the distance of the place from their habitations, and the time they must spend, for which they may severally bring their actions as aforesaid.

s. 5.

The 9 W. 3. c. 12. Ir. is nearly corresponding, which enacts (s. 1.) that after process of summons or attachment upon any writ of partition returned, and affidavit made thereupon that due notice in writing hath been given of said writ to the tenant to said writ, and a copy thereof left with the occupier or tenant in possession of said lands, or if any of them cannot be found, then to the wife, son or daughter (being of the age of 21) of such tenant to the writ, or tenant in possession, (unless such tenant in possession be demandant in the action) 40 days before the return of said summons, &c.; if such tenant to the writ,

9 W. 3. c. 12.
Ir.

writ, or tenant in possession, shall not within the term after return of such writ, or the term following the same, cause an appearance to be entered in such court, then, the demandant having filed his declaration, the court shall proceed to examine the title of the demandant, and the quantity of his part or purpart of said lands; and, according as they shall find his right to be, shall cause judgment by default to be entered for the demandant, and award a writ to make partition, whereby such proportion may be set out in severalty; of which writ notice shall be given to the occupier or tenants of said lands, &c., 6 days before the execution thereof; and the same being duly executed and returned, and final judgment entered, the same shall be conclusive to all persons, although all persons concerned are not named in the proceedings, nor the title of the tenants to the writ truly set forth. The other clauses of this statute, (s. 2. 3. 4. & 5.) are corresponding to those of the 8 & 9 W. 3. c. 31. Eng. *supra*. But this Irish act contains also clauses peculiar

s. 7.

*Mears of lands
set out by parti-
tion, &c., to be
planted, &c.*

to itself, which may be stated in this place. By s. 7. where the mears of lands between propriety and propriety shall be set out or ascertained by a writ of partition, perambulation, or otherwise, the same shall at equal charge of the proprietors thereof, or their tenants, be enclosed with good ditches, where earth sufficient may be had, and one or two rows of quicksets shall be planted therein; and where earth shall be wanting, such other fences shall be made as the nature of the soil shall permit. And by

s. 8.

s. 8. where lands are held in fee farm, or for lives renewable for ever, the charge of making such fences shall be entirely borne by the tenant; [*and where lands are leased for lives, whereof 3 shall be current, or for years whereof 21 shall be unexpired, the said mears shall be enclosed at the equal charge of landlord and tenant;] and where lands are leased for any lesser term, the bounds shall be enclosed at the sole charge of the landlord.

s. 9.

But by s. 9. this act shall not make void any covenants heretofore made relating to the enclosing of mears. By

s. 10.

s. 10. any person chargeable by this act with the fencing of their bounds, who shall not have done the same within

6 months

* *Quere*—Upon the 6th November, 1697.

6 months after such partition, shall forfeit one year's value of the land; one moiety to the poor of the parish, and the other to him that shall sue for the same: and if he shall further neglect to do the same within one year, he shall forfeit 2 years value to be paid and recovered as aforesaid. And by s. 11. all mearing, fences, ditches, and drains made or to be made, shall at all times at the equal charge of the tenants and occupiers of said lands be kept open, scoured, and cleansed, that the water may pass away; and whatsoever person shall refuse or neglect to do the same, shall forfeit one year's value of the said land, to be recovered in such manner, and to such uses, as aforesaid.

s. 11.

The 8 Geo. 1. c. 5. Ir. is another act to oblige proprietors and tenants of neighbouring lands to make fences between their several lands and holdings, and may be therefore stated in this place. By s. 1. if any proprietor, occupier, or tenant, shall be desirous to make ditches or fences between his lands and holdings and the lands next contiguous, where no dispute shall have been, for 3 years then last past, about the mears between the said lands, &c., so intended to be fenced, and where no sufficient fences, or only dead and dry fenceless ditches then shall be, the proprietor, occupier or tenant of such neighbouring lands, on reasonable request, shall be at equal expense in making between such lands, &c., good ditches of 6 feet wide and 5 feet deep at least, where the same is practicable, well quicked in good husband-like manner with white thorn, crab, or other quicksets, where the same will grow; and, in ground where such quicksets will not grow, with furz; and where furz will not grow, or where ditches cannot be made of the said depth or wideness, instead of a ditch with a dry stone wall, where stone can be conveniently had, or, if not, with a clay or mud wall not under 5 feet high, and 2' feet thick at the bottom, and 1½ foot thick at the top; and in wet low ground with sufficient trenches or drains, the banks thereof to be planted with sallops, alder, or other aquatic trees where such aquatics will grow; and if any such proprietor, &c., of any neighbouring lands, shall refuse to settle and ascertain

*Proprietors of
neighbouring
lands compella-
ble to make
fences.*

8 Geo. 1. c. 5.
Ir.

- ascertain the mears and bounds, in order to have fences made as aforesaid, he shall be compellable by bill in equity, or commission of perambulation, to ascertain such mears; and such neighbouring proprietors, &c., shall join and be at equal expense in making and preserving, scouring and repairing such ditches, trenches, drains, or fences as aforesaid, with such proprietor, &c., requiring the same: And if such neighbouring proprietor, &c., refuse, or for one year neglect so to do, then the proprietor, &c., so requiring the same, may make such ditches, &c., and the tenant or occupier of such neighbouring lands who shall have so refused or neglected to make such ditches, &c. shall pay to the person who shall make the same one moiety of what he shall reasonably, *bona fide*, and without fraud or malice, lay out in making such ditches, &c., and in planting such quicksets, and weeding them, and securing the same, together with legal interest, to be recovered by action of debt in any of his majesty's courts in Ireland, or if the sum be under £10, then by civil bill to be brought in the county where such fences shall be made, with treble costs. But by s. 2. there shall not be demanded above 1s. 6d. *per* perch of such stone or other wall, or above 1s. *per* perch for such ditch, &c., as aforesaid; and if, after such ditches, &c., are made, the person on whose lands the same be, and who ought to keep up the same, do not weed such quickset, and mend, preserve, and keep up such fences, or his part thereof, as he ought to do, such person shall have no remedy for any involuntary trespass committed by the cattle of the proprietor, occupier or tenant, of the neighbouring lands, on his lands, occasioned by such default of his. By s. 3. every person compellable by this act to ditch and fence, or to pay for the same, who shall not have an estate for life, or 11 years, in his lands, at the time he shall be requested to fence as aforesaid, is empowered to deduct out of his rent what he shall lay out, expend, or pay; first proving on oath before the justices of peace of the county where such lands lie, at their general quarter sessions, what he so laid out, &c. And by s. 4. no tenant or farmer for life, or years, shall be obliged
- s. 2.
- s. 3.
- s. 4.

obliged to ditch or fence above one-fifth part of his lands or holdings in any one year.

And this act provides (s. 5.) that where the bounds and mears between lands shall run in crooked lines, or through places inconvenient for making such ditches or fences as aforesaid, the persons whose lands are so contiguous, and to be bounded by a fence, may by consent of the tenant of the lands, and the immediate proprietor in reversion expectant on the lease then in being, appearing by writing under hand and seal, attested by 3 witnesses, make the boundaries in straight lines in more convenient places, and exchange the lands on one side of such straight line or fence, for the lands of equal value on the other side of such right lines; so as such reversioner be seised of the lands which he shall so grant in exchange at the least for the term of his own life, with remainder to his sons in tail male; and if the lands left on one side of such straight line shall be of greater value than the lands taken in on the other side, then the proprietor to whom the greater proportion shall fall, shall be enabled to charge the same with a perpetual rent-charge, sufficient to countervail such difference; which rent-charge shall go to such person, for such estate, and to the same uses, as the land so charged ought to have gone; and the lands received in exchange shall go to such person, and for such estate, and for the same uses as the lands given in exchange ought to have gone, in case no such exchange had been made. But by s. 6. no house, garden, orchard, wood, or grove, shall be included in such lands so to be exchanged. And by s. 7. all such exchanges or agreements shall be binding to all persons, notwithstanding any devise, settlement, or limitation of use: provided the lands so exchanged do not exceed 2 acres, plantation measure, in every 100 perches of such line or fence; each perch containing 21 feet. By s. 8. in case any person shall refuse to fence or plant according to this act, so as in default of so doing the proprietor, possessor, or tenant of the adjoining land shall fence and ditch between his land or holding and the neighbouring lands, &c., the person so ditching, &c., shall

*Where mears
crooked, they
may be made
straight, and
land exchanged
for the purpose.*

s. 5.

s. 6.

s. 7.

s. 8.

- and may ascertain and set out an equal proportion of such fence, which the tenant or occupier of the adjoining lands shall be obliged to keep in repair as his part of said fence, and to weed and preserve the quicksets if any planted thereon. Provided (s. 9.) that nothing herein shall avoid any covenants or contracts made between landlord and tenant for fencing, ditching, draining, and enclosing lands. And by s. 10. where landlords are obliged to allow their tenants for ditching or fencing between their holdings and their neighbours, such tenants shall, at the time of such allowance made, give security by their bonds, of the penalty of the whole sum so allowed, to such landlords, conditioned for the due and effectual weeding of such quicksets planted, and the preserving and keeping up the said ditches and fences, for which they shall be so allowed, during their respective terms in said lands, in good tenantable order and condition; and in case of refusal to give such bond, such tenant shall not have the benefit of such allowance. And by s. 12. no proprietor or lessor shall be obliged to pay or allow in any one year for ditching or fencing in pursuance of this act, more than the 20th part of the annual rent payable out of such land to such proprietor, &c.; and the tenant of such proprietor, &c., shall not be obliged to expend in any year, in making such fences, more than the 20th part of his rent payable to such proprietor, &c. But by s. 11. nothing in this act shall oblige any proprietor, occupier, or tenant, to fence or ditch between any lands, whereof the plantation acre shall not at the time, when request shall be made for the doing thereof, be worth, and which shall not really pay the landlord, 2*s.* *per annum* above quit or crown rent. And by s. 13. no proprietor, tenant, or occupier shall be obliged, by virtue of this act, to fence in or enclose any land in any one park or enclosure, which shall not contain at least 10 acres plantation measure, with a ditch or fence of above 6 feet wide, and 5 feet deep; and the most usual ways and passages to and from intermixed lands, surrounded by other proprietors, shall be left open as formerly. And by s. 14. no mears between lands belonging to several proprietors,

proprietors, enclosed or ditched by virtue of this act, shall be binding or conclusive, unless the proprietors do agree to the same in writing, under their hands and seals, attested by 3 witnesses, before or after the time of such ditching, &c., or shall suffer the said mears so ditched and enclosed to stand for 5 years after the determination of such lease or leases as shall be then in being; and, in case of infancy, coverture, being beyond sea, or of insane memory, or where a remainder shall be claimed by any settlement or will, 5 years after attaining the age of 21 years, becoming discovert, returning from beyond sea, or becoming of sane memory, or from and after such remainder shall take place. The 40 Geo. 3. c. 71. s. 8. Ir. further provides, that if any proprietor, occupier or tenant of any lands, shall complain to any justice of peace that the mears and fences between his lands and the lands next adjoining thereto are insufficient, it shall be lawful for such justice to summon the proprietors, occupiers or tenants, of such adjoining lands, and to require them, with the person so complaining, to appoint arbitrators; and in case such arbitrators shall not agree, then such justice may appoint an umpire to ascertain the state of such mears and fences, and to make a division thereof where no division has been heretofore made; which arbitrators shall be sworn to do justice between the parties, to the best of their skill and judgment; (which oath such justice is to administer;) and if such persons so appointed shall find that such fences are insufficient, they shall also estimate what sum will be necessary effectually to repair the same, and what proportion of such mears, &c., ought to be kept in repair by each party; and they shall certify the same to such justice, who, upon receipt of such certificate, may issue an order under his hand and seal to each party to repair such mears, &c., stating the proportion of expenses that each party is to be at in repairing the same, as also the proportion of such mears, &c., as each party is to keep in repair; and if either party shall refuse, or for 3 months neglect, to repair his proportion of such mears, &c., then it shall be lawful for the party who shall be willing so to do, to repair the

No mears binding unless agreement in writing, &c.

40 Geo. 3. c. 71. s. 8. Ir.

Powers of justices of peace in respect to adjusting mears.

whole of such mears, &c.; and the party so refusing or neglecting shall pay to the person who shall have repaired the same, such proportion of the expense as such arbitrators or umpire shall have certified to such justice that such person ought to have paid towards repairing the same; to be recovered by distress and sale of his goods, by warrant of such justice, or by civil bill, with double costs; provided that such sum does not exceed 20s. nor exceed the rate of 2s. *per perch*, and that the same shall appear to have been *bona fide* expended, and to be a reasonable charge.

s. 9.

Persons neglecting to repair mears, to have no remedy for involuntary trespass.

s. 10.

s. 11.

s. 12.

And by s. 9. any person refusing or neglecting to repair such mears, &c., shall have no remedy for any involuntary trespass committed by the cattle of the proprietor, occupier or tenant, of any neighbouring land, on his land occasioned by his default in keeping in repair such mears, &c.; and if the cattle of such person shall trespass on the neighbouring land, they shall be liable to pay treble trespass, and the arbitrator or umpire shall award accordingly. But by s. 10. every person compellible by this act to repair such mears, &c., or to pay for the same, who shall be only tenant at will or sufferance at the time he shall be so compelled, is empowered to deduct out of his rent what he shall have so laid out or paid, first proving on oath, before a justice of peace of the county where the lands lie, what he so laid out; provided such sum does not exceed what the arbitrators awarded that such person ought to pay for repairing the same: but nothing herein shall avoid any covenant or contract between landlord and tenant for fencing, ditching, draining, or enclosing lands. By s. 11. it shall be lawful for the occupier of lands at either side of double ditches which divide farms and lands, to plant them with timber trees for their mutual benefit, and at their mutual expense; and if either party shall refuse to pay his proportion of the expense, having been demanded in writing so to do, it shall be lawful for the other party, in 12 months after such notice being served, to plant all such double ditches, and to convert to his use all such timber trees as shall be planted thereon, and registered pursuant to the statute. And by s. 12. it shall be lawful for the party

party so planting to impound any beast caught trespassing on any part of such double ditch, and recover damages as on other lands. By s. 13. this act shall not affect the rights of manors, where manor courts are held agreeable to charter. And by s. 14. any person may appeal from the determination of the justice, to the next sessions of the peace for the county, &c., in which any distress shall be taken, who may affirm or reverse the order of such justice, with such costs as they shall think proper; which decision shall be final; and no writ of *certiorari* or other process shall be allowed for removal of such proceedings. By s. 15. no magistrate shall take any fee for any thing done by virtue of this act.

s. 13.

s. 14.

s. 15.

The 5 Geo. 2. c. 9. Ir. is also to be referred to this head: This statute enacts, that where any person shall be seised or possessed of any lands contiguous or adjoining to any bog, moss, or lough, or to ground between the flux and reflux of the sea, and shall be desirous to settle the mears and bounds thereof, with the proprietors of the other lands adjoining to or on the other side of the same, such person may exhibit an English petition in Ch. or Exc. against the proprietors of the other parts of such bog, &c., or ground or lands adjoining to the same, desiring such mears, &c., to be ascertained; and upon proof by affidavit, of such proprietors, and the tenants in possession, being personally served with copies of such petition, 30 days before the time appointed for hearing the matter thereof, it shall be lawful for the court to issue a commission to 7 or more commissioners, (for which commission the like fees shall be paid as for a commission to examine witnesses,) empowering and requiring them, or any 5 or more of them, by examination of witnesses upon oath, (which they are empowered to administer) and by the verdict of a jury of 12 men, to be returned on the precept of such commissioners by the sheriff of the county in which such lands lie, or if they lie in 2 counties, then an equal moiety of such jury to be returned out of each of said counties by the several sheriffs thereof, to inquire of and ascertain the old mears and bounds of such bog, &c., if there be any such; but if no such mears appear, then to make, lay out, and ascertain such reasonable

*Partition of
bogs.*5 Geo. 2. c. 9.
Ir.*Commission for
that purpose.*

Return of commission confirmed or altered.

s. 2.
Jury impanelled.

s. 3.
Expenses of making drains provided for.

s. 4.

reasonable means, &c., between the petitioners and other proprietors in the petition mentioned, regard being had to the length of the profitable land adjoining to such bog, &c., as to them or the major part of them shall seem meet; and where a drain shall be necessary to carry off the water from such bog, &c., the commissioners, or the major part of them, shall lay out and ascertain the same, and the length, breadth, and depth of such drain, and likewise appoint what part or proportion thereof shall be made by the several proprietors, with regard to the benefit that each of them may receive thereby; and whatever shall be done by virtue of such commission, the commissioners, or the major part of them, shall return, under their hands and seals into the court out of which such commission issued; whereupon such court shall make such order for confirming, altering, or amending such return, or may set aside the same, and issue a new commission, as shall seem just; but if no complaint be made to such court against such return, within 30 days after filing thereof, in case the same shall be filed in term time, or in the next term after filing thereof, in case the same shall be filed in time of vacation, then such return shall stand and be confirmed; and such return confirmed, altered, or amended by the court, and any order thereupon made, shall be conclusive to all the parties to the said proceedings, and all persons deriving any estate or interest in said lands, or any part thereof, from them or either of them. But by s. 2. not less than 24 men shall be returned, out of which such jury may be taken; and all the parties may have their lawful challenges to the persons so returned, as in trials of actions at law. By s. 3. if any of said proprietors, after 3 months notice in writing given to him, shall neglect or refuse well and sufficiently to make his part of such drain, according to the order of such commissioners, then it shall be lawful for the other proprietors to make such drain, and then to sue such proprietor neglecting to make his part of such drain, by civil bill, for such sum as his proportion of such drain shall amount to. But by s. 4. no one proprietor shall be liable to pay more than

1s. 6d.

1s. 6d. for each perch, containing 21 feet in length, of such drain; or more than £10 in the whole towards making such drain in any one year. And by s. 5. if any proprietors, who shall make such drain, or against whom any sum shall be recovered on account thereof, happen to be only tenants for life or years, such tenants after the determination of their respective estates, and their executors, administrators, and assigns, shall hold such bog, &c., until they shall out of the yearly rents and profits thereof be paid the sums following, viz. if such proprietor at the time of filing the return on the commission be possessed of a term less than 7 years, then until he be paid all such sums as he shall have expended, or as have been recovered against him; but if he hath a term unexpired of 7 years, then until he receive 3-4ths of such sum; but if at such time such proprietor be a tenant for one life, or by the curtesy, or in dower, or have a term of 14 years unexpired, then 2-3ds of such sum; but if he have a term for 2 lives, or for 21 years unexpired, then 1-4th of such sum; but if at such time he hath a term for 3 lives, or 31 years, unexpired, or any greater estate or term, such proprietor shall have no payment or allowance on account of said drain, when such estate or term is determined.

The clause of the 7 Ann. c. 18. Eng. seems to be also proper for this place, which provides, that if coparceners, joint-tenants, or tenants in common, be seised of any estate of inheritance in the advowson of any church or vicarage, or other ecclesiastical promotion, and a partition is made between them to present by turns, every one shall thereupon be taken and adjudged to be seised of his separate part of the advowson to present in his turn. And the 1 Geo. 2. c. 23. Ir. contains a clause (s. 6.) which is precisely similar.

s. 5.

*Partition of
advowsons.*

7 Ann. c. 18.

Eng.

1 Geo. 2.

c. 23. s. 6. Ir.

CHAP. IX.

Of Title by Escheat.

§ 1.

Natural born subjects may inherit, though their parents, &c. aliens.

11 & 12 W. 3. c. 6. Eng.

25 Geo. 2. c. 39. s. 1. Eng.

But must be in being at the death of the ancestor last seised.

s. 2.

Exception in the case of daughters.

THE doctrine of the common law in respect to *escheat* for want of heirs, has been modified by the 11 & 12 W. 3. c. 6. Eng. which enacts, that every person, being the king's natural born subject, within any of the king's dominions, may lawfully inherit as heir to any lands, &c., and make his pedigree and title by descent from any ancestor, lineal or collateral, although the father and mother, or other ancestor of such person, through whom he shall make or derive title or pedigree, was born out of the king's allegiance and dominions, as if such father, &c., had been naturalized, or a natural born subject. But to obviate the doubts and inconveniencies, which may arise upon this statute, in case of persons gaining capacities to inherit and derive their pedigrees after the deaths of their ancestors to whom they claim to be heirs, whereby estates vested by descent, mortgages, purchases, and settlements duly made, may be defeated; the 25 Geo. 2. c. 39. s. 1. Eng. provides, that the said statute shall not extend to give any title to any person to inherit as heir, or coheir, to any person dying seised of any lands, &c., in possession, reversion, or remainder, by enabling such person to derive his pedigree through any alien ancestor, unless the person so claiming title shall be in being, and capable to take such estate, as heir or coheir, by virtue of said statute, at the death of the person who shall last die seised of such lands, &c., and to whom he shall so claim to be heir, &c. But by s. 2, in case the person who shall be in being, and capable to take at the death of the ancestor so dying seised, and upon whom the descent shall

shall be cast by virtue of this act, or the said former act, shall happen to be a daughter of an alien, and that the alien father or mother, through whom such descent shall be derived by such daughter, shall afterwards have a son born within any of his majesty's dominions, the descent so cast upon such daughter shall be divested in favour of such son; and such son shall inherit and take the estate in like manner as is allowed by the common law in cases of the birth of a nearer heir; or in case such father or mother shall have no son, but shall have one daughter, or more, afterwards born within any of his majesty's dominions, the daughter or daughters so born afterwards shall inherit and take in coparcenary, with the daughter or daughters upon whom the descent shall be cast at the death of the ancestor last seised. Neither of these statutes has been adopted or followed in Ireland.

II. The statutes which relate to escheat arising from attainder for treason or other felony, are reserved for the 4th part of this digest: but it may be proper to refer in this place to the 40 Geo. 3. c. 88. s. 12. Eng. which enacts, that it shall be lawful for the king, by warrant under his sign manual, to direct the execution of any trusts to which any lands, &c., which have escheated or shall escheat to the king, (for want of heirs of the persons last seised thereof or entitled thereto, or by reason of some forfeiture, or otherwise,) would have been liable in the hands of any of his majesty's subjects, and to make any grant of such lands, &c., to any trustee, or otherwise, for the execution of such trusts; and to make any grant of any lands, &c., which have escheated or shall escheat as aforesaid, to any persons either for the purpose of restoring the same to any of the family of the persons whose estates the same had been, or of rewarding any persons making discovery of any such escheat, as to the king shall seem fit; notwithstanding the 1 Ann. c. 7. Eng. and 34 Geo. 3. c. 75. Eng. (*ante* page 174.) No Irish statute contains a similar provision.

I shall follow Sir W. Blackstone in referring to this head, those parts of the popery laws which exclude papists from inheriting, or taking by descent, devise, or purchase

§ 2.

King may grant lands escheated, to the family of the person whose estate they were, &c.

40 Geo. 3.
c. 88. s. 12.
Eng.

Papists disabled to take by descent, &c.

11 & 12 W. 3.
c. 4. s. 4.
Eng.

*Vide Book 1.
p. 140.

18 Geo. 3. c. 60.
s. 2. Eng.

*This disability
of catholics re-
moved.*

s. 4.

Conditionally.

purchase, except they shall perform certain requisites. By the 11 & 12 W. 3. c. 4. s. 4. Eng. if any person educated in the popish religion, or professing the same, shall not within 6 months after he shall attain the age of 18, take the oaths of allegiance and supremacy, and subscribe the declaration of the 30 Car. 2. st. 2.* in chancery, or king's bench, or quarter sessions of the county where he shall reside, he shall in respect of himself, but not of his heirs, be disabled to inherit or take any lands by descent, devise, or limitation, in possession, reversion, or remainder; and during his life, or till he shall take the said oaths, and subscribe the said declaration, his next of kin who shall be a protestant shall enjoy the same, without being accountable except for waste, for which he shall pay to the party disabled treble damages, to be recovered by action of debt in any court of record at Westminster. And every papist shall be disabled to purchase in his own name, or in the name of any other to his use, or in trust for him, any manors, lands, profits of lands, tenements, rents, terms, or hereditaments; and all estates, &c., made for the use of such person, or upon any trust, mediately or immediately, for the benefit of such person, shall be void. But this clause of the 11 & 12 W. 3. is recited and repealed by the 18 Geo. 3. c. 60. Eng. which enacts (s. 2.) that every person claiming any lands, &c., under titles not hitherto litigated, though derived from any descent, devise, limitation or purchase, shall hold the same as if the 11 & 12 W. 3. had not been made: But however provides (s. 4.) that nothing herein shall extend to any person but such as shall within 6 calendar months after the passing of this act, or of accruing of his title, being of the age of 21, or who, being under that age, shall, within 6 months after he shall attain that age, or being of unsound mind, or in prison, or beyond the seas, then within 6 months after such disability removed, take and subscribe the oath hereby appointed in chancery, or in any of his majesty's courts of record at Westminster, or in the courts of great sessions in Wales and Chester, or the courts of chancery or common pleas within the counties palatine of Lancaster and Durham, or in any court of general or quarter sessions in England

England or Wales; of the taking of which oath a register shall be kept in the manner prescribed by the laws in being requiring oaths from persons taking offices or employments.† And the 1 Geo. 1. st. 2. c. 55. Eng. and 31 Geo. 3. c. 32. s. 21. Eng. which required the names and real estates of papists to be registered, and their deeds and wills to be inrolled, have been repealed by the 31 Geo. 3. c. 32. s. 21. Eng.* By the 11 Geo. 2. c. 17. Eng. every person being reputed owner, or in possession, of any lands, &c., who having been a papist, or educated in the popish religion, hath conformed, or shall conform to the protestant religion, and take the oaths of allegiance, supremacy, and abjuration, and subscribe the declaration in the 30 Car. 2. st. 2. (to be repeated and subscribed in Ch. or K. B. or quarter sessions of the county where he shall reside all which shall be recorded in one of his majesty's courts at Westminster, or at the quarter sessions) and all persons, being protestants, claiming under such persons conforming, and not for the benefit of any papist, shall hold such lands, &c., freed from the disabilities incurred by such owners, &c., or by any other persons through whom the title shall be derived, unless the person entitled to take advantage of such disability shall recover such lands, &c., by judgment or decree, in some suit to be commenced 6 calendar months before the making of such record, and to be prosecuted with due diligence. Provided (s. 2.) that this act shall not prejudice the right of any person entitled to take advantage of such disability, who now is in possession, or shall have, precedent to

31 Geo. 3.
c. 32. s. 21.
Eng.

Repeal of certain acts.

11 Geo. 2. c. 17.
Eng.

What conformity removes the disabilities.

s. 2.

Savings and exceptions.

† The oath hereby appointed (which will be found in a subsequent part of this digest) is almost *verbatim* the same as that contained in the 13 & 14 Geo. 3 c. 35. Ir. (*ante* page 300) except that in the English act the first words of the oath are, "I, A. B. do sincerely promise and swear that I will, &c." and that the words "and of his only Son Jesus Christ my Redeemer" which occur in another part of the oath contained in the 13 & 14 Geo. 3. c. 35. Ir. are omitted in that prescribed by the 18 Geo. 3. c. 60. Eng. And the following sentence is also omitted therein: "And I do promise that I will not hold, maintain, or abet any such opinion, or any other opinion contrary to what is expressed in this declaration."

* The time for inrolling such deeds and wills was enlarged by the 30 Geo. 3 c. 19. Eng. and other statutes,

s. 3.

to the making of such record, been in possession of such lands, &c., 2 calendar months. And by s. 3. if any such conforming person shall return to the popish religion, such person shall for ever be disabled from having any benefit of this act, and shall be liable to the same disabilities as if he had not taken the oaths, &c. And pro-

s. 4.

vided (s. 4.) that nothing in this act shall prejudice the right of any person entitled to any remainder, or reversion, in any lands, &c., in case such person shall pursue his right by some action or suit, to be commenced within 12 calendar months next after the precedent estate, on which such remainder or reversion depends, shall be determined.

*Disability of
Irish papists to
take by descent,
&c., estates of
protestants.*

2 Ann. c. 6. s. 7.
Ir.

As this part of the popery laws is but conditionally repealed or done away, and as questions sometimes arise upon them, it seems to be also proper to state the provisions of the Irish statutes upon this subject. By the 2 Ann. c. 6. s. 7. Ir. from the 1st February, 1703, no papist, &c., shall take any benefit by reason of any descent, devise, gift, remainder, or trust, of any lands whereof any protestant shall be seised in fee-simple, or fee-tail, or in such manner that after the death of him and his wife the freehold is to come to his son or sons, or issue in tail, who shall not, within 6 months after he shall be entitled to enter or take the profits, if then of the age of 18, or, if under, within 6 months after he shall attain that age, (until which time he shall be under the care of such protestant relation, or person conforming himself as by this act directed, as shall be appointed by the court of chancery) become a protestant and conform himself to the church now established in this kingdom; but from thenceforth during the life of such person, or until he become a protestant and conform, the nearest protestant relation, or other protestant, and his heirs, being and continuing protestants, who would be entitled in case such non-conforming papist, and all other intermediate popish relations and persons, were dead, shall have the said lands without being accountable for the profits to be received during such enjoyment; subject nevertheless to such charges, other than such as shall be

be made by such disabled person, and in such condition, as such disabled person would have held the same; (the children of papists being taken to be papists till they shall by their conformity appear to be protestants;) and subject to such maintenance as the lord chancellor shall allow to the children of such papist till they shall attain the age of 18. But by s. 8. if any papist that would be en-

s. 8.

titled by virtue of this act, on the disability incurred by any other papist, shall after become a protestant and conform as aforesaid, such conforming person and his heirs, being and continuing protestants, shall from such conformity be entitled as if a protestant when the disability fell on such other papist: And the person so enjoy-

Papist conforming entitled as if protestant.

ing the same by virtue of this act, may demise the same, or any part thereof, for 21 years, or less, without fine, reserving the best improved rent, or otherwise make or renew leases as the disabled person might have done by

Leasing power given to those entitled under this act.

virtue of any power enabling him so to do; but in case any wilful waste shall be committed on said lands, &c., by the person so enjoying the same, such disabled person, his executors or administrators, shall recover full damages against the person committing such waste, his executors or administrators, by action of debt in any of

his majesty's courts of record at Dublin. This act provides (s. 9.) that the wife of such person so disabled, being a protestant, shall be entitled to dower and thirds at common law as if this act had not been made.

s. 9.

And by s. 10. as to all lands, &c., whereof any papist now is, or hereafter shall be seised in fee simple or fee-tail, the same shall, so long as any papist shall be seised thereof or entitled thereto in fee-simple or fee-tail, be of the nature of gavel-kind; and if not sold, aliened, or disposed of by such papist in his life-time, for good and valuable consideration of money *bona fide* paid, shall, for such estate, from such papist descend to all the sons of such papist any way inheritable to such estate, share and share alike, and not to the eldest, being a papist, as heir at law; and shall in like manner descend from such sons being papists; and for want of issue male of such papist, the same shall descend to all his daughters any

Right of protestant wife to dower saved.

way

Estates in fee or tail of papists to descend in gavelkind.

s. 10.

way

way inheritable to such estate, in equal proportions; and for want of such issue, amongst the collateral kindred of such papist, of the kin of his father, any way inheritable to such estate, in equal degree; and for want of such kindred, to the collateral kindred of such papist, of the kin of his mother, any way inheritable to such estate; notwithstanding any grant, settlement, disposition by will, or otherwise, that shall be made by such papist, other than such sale, alienation, or disposition as aforesaid; subject nevertheless to all debts and real incumbrances at the time of the decease of such papist charging such estate; and subject also, by s. 11. to such reasonable maintenances and portions for the daughters of such papist as he shall charge his said estate with. But it is provided (s. 12.) that if the eldest son or heir at law of such papist shall be a protestant, at the time of the decease of such papist whose heir he shall be, the lands whereof such papist shall be so seised shall descend to such eldest son, &c., according to the rules of the common law, so as the certificate of the bishop of the diocess in which he shall inhabit (testifying his being a protestant and conforming himself to the church of Ireland as by law established,) if not inrolled in the life-time of such papist, shall be inrolled within 3 months after the decease of such papist in chancery; subject nevertheless to the debts and real incumbrances at the time of the decease of such papist charging such estate: and if the eldest son or heir at law of such papist, who shall at the decease of such papist be of the age of 21, shall become a protestant, &c., or being then under the age of 21 years, shall within one year after he shall attain that age, become a protestant, and conform as aforesaid, then from the time of the inrolment in chancery of such certificate of the bishop, &c., such inrolment being made within such year, he shall be entitled to, and shall have from thenceforth, the whole real estate of such papist, as if he had been a protestant at the decease of such papist whose heir he is, notwithstanding any grant, &c., that shall be made by such papist, other than such sale, &c., by such papist as aforesaid; subject nevertheless to the debts and real incumbrances at the decease of such papist charging the same:

s. 11:

s. 12.

But the eldest son or heir at law, if protestant, shall take.

Subject to debts, &c.

same: and in every case where such eldest son shall be entitled as aforesaid by reason of his being a protestant, such real estate shall be chargeable with such sum for the maintenance and portions of the daughters and younger sons of such papist, as the court of chancery shall direct; such portions not to exceed 1-3d part of such estate. And by s. 13. such lands, &c., when and during such time as any protestant shall be seised thereof in fee-simple, or fee-tail, shall from such protestant be descendible according to the rules of the common law.

s. 13.

Then descendible as at common law.

With respect to the debts of papists, the 2 Ann. c. 6. enacted (s. 14.) that such as charged any real estate of any papist before the 1st February, 1703, should before the 1st June, 1704, be inrolled in the court of Exc. in rolls to be kept in some public place to be appointed by said court, to which all persons might, at all seasonable times, resort and peruse the same; and in default of such inrolment the same should not charge any lands of such papist, while the same should belong to any protestant: and all such debts contracted after the 1st February, 1703, are thereby required to be in like manner inrolled within 6 months after the making thereof. And to prevent any evasion of the 2 Ann. the 8 Ann. c. 3. s. 1. Ir. enacts, that no papist shall, from the 10th May, 1709, be capable to take or receive any annuity chargeable on or affecting any lands, &c.; and that all judgments, and other securities to be made for the securing any such annuity, or performance of any private trust, for the benefit of such papist, so far as such judgments may affect any lands, &c., of papists, shall be void: But by s. 2. any papist to whom such annuity shall be granted, may, upon judgment obtained, take out execution against the person, or personal estate, of such grantor. By s. 6. all settlements, fines, recoveries, and other conveyances, made since the 1st January, 1703, by any papists, or by any protestants turned papists since the 1st January, 1703, or by any papist together with his then protestant wife who hath turned papist as aforesaid, whereby any protestants were barred of any estate in reversion or remainder, whereunto they were entitled at the time of such conveyance, were declared void; and such protestants

Debts charging estates of papists to be inrolled.

2 Ann. c. 6. s. 14. Ir.

8 Ann. c. 3. s. 1. Ir.

Annuities, &c., to charge lands of papists contrary to 2 Ann. void.

s. 2.

s. 6.

Conveyances made since 1st January, 1703, to defeat rights of protestants voided.

entitled

s. 7. & 8.

*Saving for
titles of pro-
testants.*

s. 9.

*Conveyances to
elude the gavel-
ling clause
void.*

s. 10.

*Certain convey-
ances excepted.*

s. 27.

*Protestants may
sue for securi-
ties passed with
intent to evade
these laws.*

s. 30.

entitled thereto, as if such fines, &c., had not been levied or made. Provided (s. 7. & 8.) that nothing herein should impeach any purchase or mortgage, estate or incumbrance, *bona fide* made for full and valuable consideration to any protestant; subject nevertheless to all debts charging such estate, as the same would have been liable to upon the descent thereof: but such protestant in remainder or reversion to have the right of redemption of such mortgage, &c. And by s. 9. the clause of the 2 Ann. by virtue of which lands were to descend in gavel-kind, or to the eldest son of any papist turning protestant, was declared to take effect from the 1st day of the session in which said act was made; and all conveyances, &c., made since the first day of that session to elude the said act were declared void. But by s. 10. conveyances after 21st September, 1703, and before 25th March, 1704, for good and valuable considerations of marriage or money *bona fide* paid, were excepted for the benefit of such *bona fide* purchasers, and of the parties to such marriage articles, and the issue of such marriages, and of such women as should have jointures settled upon them in consideration of such marriages. And by s. 27. all collateral and other securities to cover any conveyance contrary to the 2 Ann. c. 6. shall be void; and all lands, &c., so conveyed or leased contrary to said act, and all collateral securities to cover the same, may be sued for by any protestant by his proper action founded on this act, in any of her majesty's courts of law or equity; and the plaintiff or demandant in such suit, upon proof that such purchase or lease was made in trust for any papist, shall obtain a verdict and judgment, or decree thereupon, and shall have execution to be put into the possession thereof, according to the estate which such papist should, if qualified, have had therein; subject nevertheless to all rents, covenants, conditions, reservations, incumbrances, and portions, as the same would have been in the hands of such papist, or his trustee; and shall also have the benefit of all such collateral securities as the party to whom the same shall have been made might have had, if this act, or the 2 Ann. had not been made. And by s. 30. any protestant may prefer

prefer a bill in the court of Ch. or Exc. against any person concerned in any such sale, lease, mortgage, or incumbrance, and against all persons privy to any such trust for papists, and compel such persons to discover such trusts, and to answer all matters relating thereto; to which bill no plea or demurrer shall be allowed; which answers shall be evidence in all actions to be brought on this act; and all issues to be tried in any such actions or suits, shall be tried by none but known protestants. But by s. 28. with respect to such papists as purchased any estates or interests, other than such lands, &c., as were once vested in the trustees for the sale of the forfeited estates, and afterwards divested out of them and vested in other persons by any private act of parliament in Great Britain; or who lent any money on mortgages, or purchased in any mortgages in the name of any persons in trust for them, (other than mortgages of such lands, &c., as before excepted) and became protestants before the 25th December, 1709, and inrolled certificates of the respective bishops of the dioceses in which they resided, in chancery, testifying their being protestants, and conforming themselves to the church of Ireland, &c., and made and subscribed the declaration, and took and subscribed the oath of abjuration in such manner as expressed in the 2 Ann. c. 6. and from the time of such conversion educated their children under the age of 14 in the protestant religion, the purchases, mortgages, leases, and other covenants and agreements made to any such papist, or in trust for them, were thereby declared to be as good and effectual as if they were protestants at the time of such purchases, &c. Provided (s. 29.) that nothing herein shall weaken the title of any protestant purchaser for valuable consideration, *bona fide*, from any person who purchased in trust for any papist, or from any protestant deriving under such purchaser, not having notice of such trust. These several clauses which were calculated to defeat certain evasions of the 2 Ann. c. 6. seem proper to be adverted to, though of a temporary nature.

*And file bills
for discovery
of trusts for
papists.*

s. 28.

*Exception as to
papists who
conformed be-
fore 25th De-
cember, 1709.*

s. 29.

*Rights of pro-
testant purcha-
sers saved.*

*Provision for
wives of papists
conforming.*

8 Ann. c. 3.
s. 14. Ir.

s. 15.

The clause of the 2 Ann. c. 6. Ir. has been already stated, which contained a saving for the right of the protestant wives of disabled papists, in respect to dower out of their estates: And lest the wives of papists should be deterred from renouncing the errors and superstitions of the church of Rome, the 8 Ann. c. 3. s. 14. Ir. provides, that if any woman being a papist at the time of her marriage with a popish husband, who hath power by any settlement making him tenant for life to limit a jointure on such wife, and yet shall not execute such power in his life-time, shall become a protestant, and inroll a certificate thereof from the bishop of the diocess, and receive the sacrament according to the usage of the church of Ireland; if such woman shall survive her said husband, she shall have such provision as the lord chancellor, upon a bill grounded on this act, shall think fit, not exceeding the power reserved in such settlement. And by s. 15. such popish wife becoming a protestant in the life-time of such popish husband, shall receive such share (not being otherwise provided for by virtue of any agreement before marriage, or by reason of dower or jointure, or other estate, charge, or interest, out of the freehold and inheritance of such husband, before or after such marriage) of the chattels, real and personal, whereof said husband shall die possessed or entitled to, as the court of chancery shall, on a bill to be preferred by such widow, grounded on this act, think reasonable, not exceeding 1-3d part after debts and funeral charges, notwithstanding any will, or voluntary disposition, to be made by such popish husband to the contrary; or the statute of distribution 7 W. 3. c. 6. Ir. notwithstanding.

*Who to be
deemed protest-
ants.*

2 Ann. c. 6.
s. 15. Ir.

8 Ann. c. 3.
s. 11. Ir.

By the 2 Ann. c. 6. s. 15. Ir. no person shall take benefit by this act as a protestant, that shall not conform to the church of Ireland as by law established, and subscribe the declaration against transubstantiation, invocation of saints, and the sacrifice of the mass, and take and subscribe the oath of abjuration hereby prescribed. And by the 8 Ann. c. 3. s. 11. Ir. no person who hath turned or shall turn from the popish to the protestant religion, shall be deemed a protestant within the meaning of either of these acts, notwithstanding the procuring the certificate

certificate of the bishop of the diocess, unless such person shall, if already converted, before the 25th December, 1709, or within 3 months after returning into the kingdom, or otherwise within 6 months after declaring himself a protestant, or within 6 months after attaining the age of 18, take the sacrament of the Lord's supper according to the usage of the church of Ireland, and make and subscribe the said declaration against popery, and take the said oath of abjuration contained in the 2 Ann. c. 6. and also file in chancery, or in some other of the 4 courts at Dublin, a certificate thereof, in like manner as the bishop's certificate is to be filed ;* for which certificate 6*d.* shall be the fee. The time for such converts to perform said requisites was from time to time enlarged by the 1 Geo. 3. c. 13. 3 Geo. 3. c. 26. 5 Geo. 3. c. 15. 7 Geo. 3. c. 20. 17 & 18 Geo. 3. c. 36. 19 & 20 Geo. 3. c. 14. and 34 Geo. 3. c. 23. But the 21 & 22 Geo. 3. c. 26. Ir. is an act for rendering the manner of conforming from the popish to the protestant religion more easy and expeditious, and accordingly provides that any person who shall be desirous of conforming, shall be deemed to be a protestant of the church of Ireland as by law established, if he shall on any Sunday in the year, in the time of divine service, take and receive from the hands of the minister or curate of any parish in this kingdom, the sacrament of the Lord's supper according to the usage of said church of Ireland; and shall before such minister, &c., in the house of such minister, &c., or at any other convenient place, make and subscribe the said declaration (against popery) contained in the 2 Ann. c. 6. and shall also take the oaths of allegiance, supremacy, and abjuration; (which declaration and oaths such minister, &c. is authorized and required to receive and administer,) and shall file in chancery a certificate under the hand and seal of such minister, &c., of his having performed the said several requisites; which certificate such minister, &c., shall grant without fee or reward; and for the filing of which certificate 6*d.* shall be the fee. Provided (s. 2.) that every certificate shall be so filed within 6 months after every person so conforming shall have so received the sacrament, or if such

* Vide 2 Ann.
c. 6. s. 3.
next page.

Time for con-
forming en-
larged.

21 & 22 Geo. 3.
c. 26. Ir.

New mode of
conforming.

s. 3.

2 Ann. c. 6.
s. 3. Ir.*Conformity of
eldest son made
the father tenant
for life.**This clause of
the 2 Ann. re-
pealed by
17 & 18 Geo. 3.
c. 49. s. 6. & 7.
Ir.**Disabilities of
catholics in
respect to the
descent and
transfer of their
estates relaxed.*

person be under the age of 18, then within 6 months after attaining that age. By s. 3. every such minister, &c., shall keep a roll of parchment, from which roll said declaration shall be read, and said oaths administered; and the person so conforming shall sign the same respectively. It was a provision of the 2 Ann. c. 6. s. 3. Ir. that in case the eldest son and heir of a popish parent should be a protestant, that then from the time of the inrolment in chancery of a certificate of the bishop of the diocess, in which he should inhabit, testifying his being a protestant, and conforming to the church of Ireland, &c., such popish parent should become only tenant for life of all the real estate whereof such popish parent was then seised in fee-simple or fee-tail, and the reversion in fee become vested in such eldest son being a protestant; subject nevertheless to the debts at the time of such inrolment charging such estate, and subject also to such maintenances and portions for the other children, as well protestants as papists, of such popish parent, as the court of chancery should order for them respectively, such portions not exceeding the value of 1-3d part of the inheritance of such estate: but such estate to be held discharged of all voluntary settlements made by such parent, and also of all sales and incumbrances made by him after such inrolment of such certificate: and the court of chancery was hereby required to keep distinct rolls for the inrolment of such certificates, to be hung up in some public place belonging to said court. But by the 17 & 18 Geo. 3. c. 49. s. 6. & 7. Ir. from the 1st November, 1778, no such conformity of the eldest son, or filing the bishop's certificate, or performing the requisites by the 2 Ann. c. 6. or by any other act required in that respect, shall affect or alter the estate of any popish parent by making him become tenant for life, or by vesting a reversion or estate in such eldest son: but nothing herein shall affect the title of any eldest son and heir of any popish parent, who before the passing of this act shall have conformed as directed by the 2 Ann. c. 6. Ir. or of any person deriving under such eldest son.

But these disabilities of catholics in respect to the descent and transmission of their estates, were in a great degree removed by the 17 & 18 Geo. 3. c. 49. Ir. which enacts

enacts that all lands, &c., whereof any papist is or shall be seised in fee-simple, or fee-tail, whether at law or in equity, shall from the 1st August, 1778, be descendible, devisable, and transferable, as fully and beneficially as if the same were in the seisin of any other of his majesty's subjects. And by s. 2. all papists shall be capable to take any such estate as shall descend, or be devised, or transferred, notwithstanding the said statutes of queen Anne, or any other statute. But by s. 3. no papist shall take any benefit from this act, unless he shall within 6 months after any devise, descent, or limitation, shall take effect in possession, if at that time within this kingdom, or if then abroad beyond the seas, or under the age of 21, or in prison, or of unsound mind, or under coverture, then within 6 months after his return from abroad, &c., take and subscribe the oath of allegiance and declaration prescribed by the 13 & 14 Geo. 3. c. 35. Ir. in one of the 4 courts in Dublin, or at the quarter sessions for the county of Dublin, or before the going judges of assize in open court.* And by s. 4. the names of the persons who shall take and subscribe the said oath and declaration, with their titles and additions, shall be entered upon rolls to be appointed by the respective courts, which rolls shall be transmitted to, and deposited once in every year, in the rolls office of this kingdom. And by s. 8. all persons being in the actual possession of any lands, &c., under titles (which shall not have been litigated before the 1st November, 1778,) whether derived by descent, devise, limitation, or purchase, and all persons deriving under settlements made upon marriages, or other valuable consideration, by papists in possession, shall hold the same as if the said acts of queen Anne had not been made. And by s. 9. all conveyances heretofore made by papists, to or for the use of protestants, shall be as valid as if made by protestants. But by s. 10. no person shall take benefit by this act, who, having been converted from the popish to the protestant religion, shall relapse to popery, nor any protestant who shall become a papist, or educate,

17 & 18 Geo. 3.
c. 49. s. 1. Ir.

s. 2.

s. 3.

s. 4.

s. 8.

s. 9.

s. 10.

*Exception of
lapsed protest-
ants.*

* This time was enlarged to the 1st November, 1792, by the 32 Geo. 3. c. 22. Ir.

21 & 22 Geo. 3.
c. 24. Ir.

*Catholics may
take by purchase
or descent any
lands, or inte-
rest therein, ex-
cept advowsons,
&c.*

s. 2.

s. 4.

s. 3.

s. 9.

s. 16.

*Qualification
oaths to be taken.*

s. 17.

And recorded.

cate, or suffer to be educated, any of his children under the age of 18 in the popish religion. And by the 21 & 22 Geo. 3. c. 24. Ir. it shall be lawful for any person professing the popish religion to purchase, or take by grant, limitation, descent, or devise, any lands, &c., or any interest therein, (except advowsons, and also except any manor or borough the freeholders or inhabitants whereof are entitled to vote for burgesses to represent such borough or manor in parliament,) and the same to dispose of as he shall think fit, by will or otherwise; and such lands, &c., shall be descendible according to the common law, and devisable and transferable as the lands of protestants: provided (s. 2.) that nothing herein shall prevent papists from taking any interest in lands in any manor or borough, as they might have done before the passing of this act. And provided also (s. 4.) that nothing herein shall affect the right of any eldest son and heir of a popish parent, who hath conformed before the 1st November, 1778, or of any person deriving under such eldest son, &c. And by s. 3. all suits in law or equity commenced before the passing of this act are saved. But by s. 9, nothing in this act shall extend to any person who shall be perverted from the protestant to the popish religion. And by s. 16. no benefit herein shall extend to any person who hath not heretofore, or who shall not hereafter before the accruing of such benefit, being of the age of 21, or being under that age within 6 months after he shall attain that age, or being of unsound mind, or in prison, or beyond the seas, or under coverture, then within 6 months after such disability removed, take and subscribe the oath and declaration prescribed by the 13 & 14 Geo. 3. c. 35. Ir. in one of the 4 courts in Dublin, or at the quarter sessions for the county of Dublin, or before any of the going judges of assize, in open court. And by s. 17. the names of the persons taking and subscribing such oath and declaration, with their places of abode, and, if laymen, with their quality, condition, titles, and places of abode, shall be entered upon rolls to be appointed by the respective courts; and the said rolls once in every year shall be transmitted to the rolls office of this kingdom;

kingdom; and the proper officers of the rolls office, four courts, quarter sessions, and courts of assize, shall grant certificates under their hands, to all persons who have taken, &c., or shall take, &c., said oath, &c., in which certificates the quality, condition, and titles if laymen, and places of abode of all such persons, shall be particularly specified, (for every of which certificates 2s. shall be paid) which certificates shall be allowed in all courts of law and equity, as evidence of such persons having taken and subscribed the said oath, &c., as if the roll were produced. But these distinctions between protestants and catholics are in effect done away by the 33 Geo. 3. c. 21. s. 1. & 14. Ir. which enacts that his majesty's subjects being papists, or persons professing the popish or Roman catholic religion, or educating any of their children in that religion, shall not be liable to any penalties, forfeitures, disabilities or incapacities, or to any laws for the limitation, charging, or discovering of their estates and property, real or personal, or touching the acquiring of property, or securities affecting property, save such as his majesty's subjects of the protestant religion are liable to: provided they shall take and subscribe the oath and declaration contained in this act, and also the oath prescribed by the 13 & 14 Geo. 3. c. 35. as already stated, (*ante* page 300.)

33 Geo. 3.
c. 21. s. 1. &
14. Ir.

*These disabilities
removed condi-
tionally.*

With respect to the acquisition of landed property by catholics: It was a provision of the 2 Ann. c. 6. s. 6. Ir. that every papist should from the 24th March, 1703, be disabled and incapable to purchase in his own name, or in the name of any other person to his use, or in trust for him, any lands, &c., or any rent or profits out of the same, or any leases or terms thereof, other than terms not exceeding 31 years, whereon a rent not less than 2-3ds of the improved value at the time of making such leases was reserved; and that all other leases and interests should be void. But by the 11 & 12 Geo. 3. c. 21. Ir. every papist shall be at liberty to take a lease of any quantity of bog, not exceeding 50 acres, plantation measure, and half an acre of arable land as a site for a house, or for delving for gravel or limestone for manure, next adjoining

*Disability of
papists to ac-
quire landed
property.*

2 Ann. c. 6.
s. 6.

11 & 12 Geo. 3.
c. 21. s. 1. Ir.

*Relaxation as
to leases of bog.*

joining to such bog, at such rent as shall be agreed upon,
 s. 3. for any term not exceeding 61 years: provided (s. 3.)
 that if the bog so demised, or one-half thereof, shall not
 be reclaimed within 21 years from the commencement of
 such lease, the said lease shall at the expiration of the 21
 s. 4. years be void: and provided also (s. 4.) that such bog
 when reclaimed shall be free from payment of tithes, or
 grand jury or vestry cesses or applotments, for 7 years
 s. 5. from its being so reclaimed. And by s. 5. no bog shall
 be considered as unprofitable so as to entitle the reclaimer
 thereof to the benefit of this act, which shall not be 4
 feet deep from the surface to the bottom of the bog when
 reclaimed; nor shall any person be entitled to the bene-
 fit of this act for reclaiming any bog of less dimensions
 than 10 plantation acres; nor shall this act extend to any
 bog lying within a mile of any city, or market town.
 This disability of catholics was further relaxed by the

17 & 18 Geo. 3.
 c. 49. s. 1. Ir.

*Further relax-
 ation as to leases
 for 999 years,
 or determinable
 upon 5 lives.*

s. 3.

*Disability con-
 ditionally
 removed.*

17 & 18 Geo. 3. c. 49. Ir. which enacts (s. 1.) that from
 the 1st August, 1778, it shall be lawful for any papist to
 take any lease for any term of years not exceeding 999,
 or for any term of years determinable upon any number
 of lives not exceeding 5; provided that a rent *bona fide*
 to be paid in money shall be reserved during such terms;
 and to dispose of the same by will or otherwise: provided
 (s. 3.) that he shall before the 1st January, 1779, or some
 time previous to such lease made to or in trust for him,
 if in this kingdom, (or if then beyond the seas, or under
 the age of 21, or in prison, or of unsound mind, or un-
 der coverture, then within 6 months after his return from
 abroad, &c.,) take and subscribe the oath and declara-
 tion in the 13 & 14 Geo. 3. c. 35. Ir. in the manner al-
 ready stated (page 501.) This branch of this act is also
 subject to the proviso and exception in respect to lapsed
 protestants, or protestants becoming papists, or educating
 their children as papists, above also stated, (page 501.)*
 But all disabilities touching the acquiring of property
 have been removed, (as already mentioned) in respect to
 such

* It is observable that the 33 Geo. 3. c. 21. Ir. does not contain the same ex-
 ception in respect to protestants relapsing or perverted to popery, as was
 contained in the 17 & 18 Geo. 3. c. 49. Ir. and 21 & 22 Geo. 3. c. 24. Ir.

such catholics as shall take and subscribe the oaths and declaration contained in the 13 & 14 Geo. 3. c. 35. and 33 Geo. 3. c. 21. in the manner thereby directed.

The statutes 1 Geo. 3. c. 12 & 13. Ir. 3 Geo. 3. c. 26. *Protestant titles derived through catholics confirmed.* Ir. and 13 & 14 Geo. 3. c. 25. Ir. contain provisions for confirming the titles, and quieting the possessions of protestants derived through catholics: The last of these statutes enacted, that the title of any protestant to any lands, &c., should not be impeached by the aid of any of the popery laws, by means of any right which accrued 20 years before the first day of the *then* sessions of parliament, if no suit had been commenced within that time claiming such right; and if some person of full age, of sound memory, and out of prison, and in this kingdom, and discover, (the right being in a woman,) was in being, within 20 years before the first day of said session, who might have sued for such right; nor by the aid of said laws by reason of any right which shall have accrued 20 years before the commencement of any suit claiming such right, if some person of full age, &c., shall have been in being before the commencement of such suit, who might have sued for such right. But by s. 2. judgments or decrees heretofore obtained, or suits *then* depending, were saved and excepted. This provision for quieting titles was revived and continued to the 24th June, 1790, &c., by the 17 & 18 Geo. 3. c. 36. s. 10. Ir. And by the 17 & 18 Geo. 3. c. 49. s. 8. Ir. *17 & 18 Geo. 3. c. 49. s. 8. Ir.* every person being in the actual possession of lands, &c., under titles not litigated before 1st November, 1778, whether derived by descent, devise, limitation, or purchase, and all persons deriving under settlements made upon marriages, or other valuable consideration, by papists in possession, shall hold the same as if the 2 Ann. c. 6. or 8 Ann. c. 3. had not been made: Provided (s. 9.) that nothing herein shall affect any title already vested upon which any suit is depending, or to be instituted before the 1st November, 1778, which shall be prosecuted with effect, and without delay: and every conveyance heretofore made by any papist for the use of a protestant, shall be as valid as if made by a protestant. *s. 9.*

CHAP. X.

Of Title by Occupancy.

The right of
occupancy ex-
tinguished as to
estates *pur*
auter vie.

29 Car. 2. c. 3.
s. 12. Eng.
7 W. 3. c. 12.
s. 9. Ir.

14 Geo. 2.
c. 20. s. 9.
Eng.

Surplus of such
estates after
payment of debts
distributable.

THE statute of frauds 29 Car. 2. c. 3. s. 12. Eng. has provided in respect to estates *pur auter vie*, (which is the only description of real property to which the right of occupancy extended at common law,) that such estates shall be devisable by a will in writing, signed by the party so devising the same, or by some other person in his presence and by his express directions, attested and subscribed in the presence of the devisor by 3 or more witnesses; and if no such devise be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee-simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate by virtue of the grant, and shall be assets in their hands: of which clause the 7 W. 3. c. 12. s. 9. Ir. is a transcript. But the 14 Geo. 2. c. 20. s. 9. Eng. has not been followed in Ireland,* which act recites that doubts had arisen to whom the surplus of such estates, after the debts of the deceased owners were satisfied, should belong, where no devise had been made thereof; and enacts, that such estates *pur auter vie*, in case there be no special occupant thereof, of which no devise shall have been made according to the said act for the prevention of frauds and perjuries, or so much thereof as shall not have been so devised, shall go, be applied, and distributed, in the same manner as the personal estate of the testator or intestate.

CHAP.

* The other clauses of the 14 Geo. 2. c. 20. Eng. are contained in the 21 Geo. 2. c. 11. Ir.]

CHAP.* XI.

Of Title by Forfeiture.

WITH respect to forfeitures arising from alienation in *mortmain*: the great charter 9 Hen. 3. c. 36. E. & I. ordains that it shall not be lawful to give lands to any religious house, and to take the same lands again to hold of the same house: nor shall any house of religion take the land of any, and lease the same to him of whom he received it: and if any man so give his lands to any religious house, and be convict, the gift shall be void, and the land shall return to the lord of the fee. And by the 7 Edw. 1. st. 2. E. & I. no person shall buy or sell any lands or tenements, or under colour of gift or lease, or other title, or by any craft or engine, appropriate lands, under pain of forfeiture of the same, whereby such lands may come into mortmain: and if any person offend against this statute, it shall be lawful to the lords of the fee to enter into the same, within a year from the time of the alienation, and to hold it in fee; and if the chief lord immediate will not enter within the year, it shall be lawful for the next chief lord to enter within half a year next after: and so every lord mediate may enter, if the next immediate lord to him be negligent: and if all the lords of such fees, which be of full age, within the four seas, and out of prison, be negligent, the king, after the year accomplished, shall take such lands, &c., and enfeof others therein by services for the defence of the realm; saving to the lords their escheats and services. The 13 Edw. 1. st. 1.

Alienations in mortmain void.
9 Hen. 3. c. 36.
E. & I.

7 Edw. 1. st. 2.
E. & I.

* The only statute referable to the head of Title by Prescription, is the 32 Hen. 8. c. 2. Eng. which is one of the statutes of limitation which will be particularly stated in the following part of this digest.

13 Edw. 1. st. 1.
c. 32. E. & I.

Collusive recoveries declared void.

st. 1. c. 32. E. & I. recites, that religious men and other ecclesiastical persons used to implead parties, and then such parties made default by collusion; so that where the demandant by occasion of the statute (7 Edw. 1. st. 2.) could not obtain seisin of the land, by title of gift, or other alienation, yet he should by reason of such default, and so the statute was evaded: but this statute provides that in such case, after the default made, it shall be inquired by the country, whether the demandant had right, and if it be found that he had, he shall recover seisin; and if he had no right, the land shall accrue to the next lord of fee, if he demand it within a year from the time of the inquest taken; and if he do not, it shall incur to the next lord, if he demand it within half a year; and so every lord, after the lord immediate, shall have half a year, until it come to the king: and to challenge the jurors of the inquest shall be admitted for the lords of the fees, and likewise for the king; and after judgment given the lands shall remain in the king's hands until it be de-raigned by the demandant, or some other chief lord, and the sheriff shall answer therefore at the exchequer. And

13 Edw. 1. st. 1.
c. 33. E. & I.

Crosses of knights templars, &c., no privilege.

by the 13 Edw. 1. st. 1. c. 33. E. & I. in case the tenants set up crosses upon their lands, in order to defend themselves against the chief lords of the fees, by the privileges of knights templars and hospitalers, such lands shall be forfeited to the chief lord, or to the king, in the same manner as is provided for lands aliened in mortmain.

15 Ric. 2. c. 5.
E. & I.

Converting lands into churchyards an evasion.

The 15 Ric. 2. c. 5. E. & I. was also passed to defeat another subtile imagination of religious or spiritual persons to evade the former statutes of mortmain. This statute recites that of late some spiritual persons have entered into lands adjoining to their churches, and of the same by sufferance of the tenants have made church-yards, and by bulls of the bishop of Rome have hallowed the same without license of the king and of the lords; and therefore declares that it is within the statute of mortmain, 7 Edw. 1.: and that no purchase shall be made so as spiritual persons shall take the profits, upon pain of forfeiture; and the statute shall be kept of all lands, advowsons, and other possessions, to be purchased to the use

Lay corporations within the statute.

use of guilds or fraternities; and mayors, bailiffs, and commons, of cities and towns that have a perpetual commonalty, and others which have offices perpetual, shall not purchase upon pain contained in the said statute. And by the 23 Hen. 8. c. 10. Eng. all feoffments, fines, recoveries, wills and other assurances made to the use of parish churches, chapels, church-wardens, guilds, commonalties, companies or brotherhoods made of devotion, or by assent of the people without any corporation, or to the intent to have obits perpetual, or a continual service of a priest for ever, or for three-score or four-score years, or for other like uses, shall be void: provided (s. 3.) that every person being seised of lands, &c., may ordain any of such uses, so that none such be made to continue above 20 years after the making. But by s. 4. if any persons in fraud of this statute bind their heirs or any other persons, to suffer such uses to continue contrary to this act, upon penalties of loss of any other lands, &c., or other things, or attempt by any other colour or means to make such uses contrary to this act, to continue for any longer time than above limited, every such penalty and thing shall be void; and this statute shall be expounded beneficially to the avoiding of such uses. By s. 5. in cities and towns corporate, where by ancient custom they have authorities to devise in mortmain the lands, &c., within such cities, &c., this act shall not be prejudicial to such custom. No statute in Ireland has provided in any similar manner against such superstitious uses.

As to licenses of mortmain: It was provided by the 34 Edw. 1. st. 3. E. & I. touching the grant of the king to be obtained upon inquests returned for lands to be put in mortmain, (pursuant to the 27 Edw. 1. st. 2. which directed the mode in which the writ of *ad quod damnum* was to be sued in such case amongst others) that nothing should be done where there should be any mesne lords, except the religious persons could shew the king their assent, under their patents, sealed with their seals; and that nothing should pass where the donor retained nothing to himself; and likewise where inquisitions were made without warrant, viz. without the writ original returned with

23 Hen. 8.
c. 10. s. 1. & 2.
Eng.

*Feoffments to
the use of any
parish church,
&c., void.*

s. 3.

Exception.

s. 4.

Evasion.

s. 5.

*Saving for
customs of ci-
ties, &c.*

*Consent of
mesne lords ne-
cessary for king's
license.*

34 Edw. 1.
st. 3. E. & I.

18 Edw. 3.
st. 3. c. 3.
E. & I.

*Right of the
king to grant
licenses recog-
nized.*

7 & 8 W. 3.
c. 37. Eng.

32 Geo. 3.
c. 31. Ir.
9 Geo. 2. c. 36.
Eng.

*Dispositions of
lands, &c., for
charitable uses,
when and how
to be made.*

s. 2.

with the inquisition; and also except the writ made mention of every thing according to the new ordinance. And this right of the king to grant such licenses was further declared by the 18 Edw. 3. st. 3. c. 3. E. & I. which enacted, that if prelates, clerks beneficed, or religious people, which have purchased lands and the same have put to mortmain, be impeached, and they shew a charter of license, and process thereupon made by inquest of *ad quod damnum*, or by grace or fine, they shall be let in peace; and if they cannot shew that they have entered by due process, they shall be received to make reasonable fine. And the 7 & 8 W. 3. c. 37. Eng. further declares or enacts, that it shall be lawful for the king to grant to any person, or body corporate, their heirs and successors, license to alien in mortmain, and to purchase and hold in mortmain, in perpetuity or otherwise, any lands, &c.: and by s. 2. lands so aliened or acquired, shall not be subject to forfeiture. This statute has been followed by a corresponding act in Ireland—32 Geo. 3. c. 31. Ir. But the 9 Geo. 2. c. 36. Eng. provides that no manors, lands, advowsons, or other hereditaments, nor any money or other personal estate to be laid out in the purchase of lands, &c., shall be any ways conveyed or settled to any person, or bodies corporate, or otherwise, or any ways charged in trust for charitable uses, unless such gift, conveyance, &c., (other than stocks in the public funds) be made by deed indented, sealed and delivered in presence of 2 witnesses, 12 calendar months before the death of such donor, (including the days of the execution and death) and be inrolled in chancery within 6 calendar months after execution; and unless such stocks be transferred 6 calendar months before the death of such donor; (including the days of the transfer and death) and unless the same be made to take effect in possession immediately from the making, and be without power of revocation. But by s. 2. nothing herein relating to the sealing and delivering of any deed, 12 calendar months before the death of the grantor, or to the transfer of stock, 6 calendar months before the death of the grantor, shall extend to any purchase for a full and valuable

valuable consideration, actually paid before the making of such conveyance or transfer. By s. 3. all gifts, conveyances, &c. of lands, &c. or of any charge affecting lands, or of any stock or personal estate to be laid out in the purchase of lands, &c. or of any estate or interest therein, or of any incumbrances affecting the same, for charitable uses, which shall be made in any other manner, shall be void. But by s. 4. this act shall not make void dispositions of any lands, &c., to either of the universities, or the colleges or houses within either of them, or to the colleges of Eton, Winchester, or Westminster, for the better support of the scholars upon the foundation. Nor by s. 6. shall this act extend to Scotland. And so much of this act as restrained the colleges in said universities from purchasing, or holding advowsons, has been repealed by the 45 Geo. 3. c. 101. E. No statute has been passed in Ireland corresponding, or similar to the 9 Geo. 2. c. 36. Eng. The statutes of mortmain were suspended in Ireland for 20 years in favour of spiritual corporations, by the 3 & 4 Ph. & M. c. 8. Ir. in like manner as in England by the 1 & 2 Ph. & M. c. 8. Eng.: And they have been also dispensed with by several acts passed in both countries, for encouraging the augmentation of poor livings, and other such purposes.

s. 3.

s. 4.

s. 6.

45 Geo. 3.
c. 101. E.

II. The exemption from forfeiture by *lapse*, where the right of presentation to a church is in the crown, is declared by the 17 Edw. 2. st. 1. c. 8. E. & I. which enacts, that of churches vacant, the advowsons whereof belong to the king, and to which others present, if the king recover his presentation, though after 6 months from avoidance, no time shall prejudice him, so that he present within 6 months. As to the principle of law which exempts donatives from lapsing to the ordinary, the 29 Geo. 2. c. 18. Ir. has made an exception, in like manner as the 1 Geo. 1. st. 2. c. 10. Eng. these acts having provided that donatives augmented by the trustees of first fruits shall be subject to lapse to the ordinary, as in case of presentative livings.

§ 2.

Lapse of 6
months shall not
prejudice the
king.17 Edw. 2.
st. 1. c. 8.
E. & I.1 Geo. 1. st. 2.
c. 10. Eng.
29 Geo. 2.
c. 18. Ir.Certain dona-
tives lapse to the
ordinary.

III. For avoiding of *simony* it is enacted by the 31 Eliz. c. 6. s. 5. Eng. that if any person, or body corporate, shall for any sum of money, reward, gift, profit or benefit,

§ 3.

Simoniackal pre-
sentations and
contracts void.

31 Eliz. c. 6.
s. 5. Eng.

s. 7.

1 W. & M.
st. 1. c. 16.
Eng.

Simoniackal contract where it shall not prejudice.

s. 3.

Lease made bona fide by simonist good.

12 Ann. st. 2.
c. 12. Eng.

benefit, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance of or for any sum of money, &c., directly or indirectly, present or collate any person to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, or give or bestow the same for or in respect of any such corrupt consideration; every such presentation, collation, or gift, and every admission, institution, investiture, and induction thereupon shall be void; and it shall be lawful for the crown to present, or collate unto, or give such benefice, &c., for that turn only. Provided (s. 7.) that no title to confer or present by lapse shall accrue upon any voidance mentioned in this act, but after 6 months next after notice given of such voidance by the ordinary to the patron. This statute also punishes the offence of simony in a criminal way, but these clauses are reserved for another place. But it is provided by the 1 W. & M. st. 1. c. 16. Eng. that after the death of the person so simoniackally promoted, the offence or contract of simony shall, neither by way of title in pleading, or in evidence to a jury, or otherwise, be alleged or pleaded to the prejudice of any other patron innocent of simony, or of his clerk by him presented or promoted, upon pretence of lapse to the crown, metropolitan, or otherwise, unless the person simoniackally presented, or his patron, was convicted of such offence at the common law, or some ecclesiastical court, in the life-time of such simoniack person. And by s. 3. no lease really and *bona fide* made, by any such person simoniackally promoted to any deanery, prebend, or parsonage, or other ecclesiastical benefice or dignity, for good and valuable consideration, to any person not being privy to or having notice of such simony, shall be impeached or avoided by reason of such simony. It is further enacted by the 12 Ann. st. 2. c. 12. Eng. that if any person shall for any sum of money, reward, gift, profit or advantage, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance, in his own name, or in the name of any other person, take, procure, or accept the next avoidance of, or presentation to any benefice with cure

cure of souls, dignity, prebend, or living ecclesiastical, and shall be presented or collated thereupon, every such presentation, &c., and every admission, institution, investiture, and induction upon the same, shall be void; and such agreement shall be deemed to be a simoniacal contract; and it shall be lawful for the crown to present or collate unto, or give such benefice, &c., for that turn only; and the person so corruptly taking such benefice &c., shall be disabled to hold such benefice, &c., and shall be subject to any penalties inflicted by the laws ecclesiastical, as if such corrupt agreement had been made after such benefice, &c. had become vacant. No statute in Ireland has restrained the offence of simony, either by civil forfeitures, or otherwise: in this country therefore it is only punishable by ecclesiastical censures.

With respect to forfeiture by waste—the statutes which respect the remedies for redress of this injury of waste, seem more properly to belong to the next part of this digest. And as to forfeiture by bankruptcy, the statutes which relate to it will be found in a subsequent chapter.

CHAP. XII.

Of Title by Alienation.

BY the statute *quia emptores terrarum* 18 Edw. 1. st. 1. c. 1. E. & I. it shall be lawful for every freeman to sell his lands, or part of them, so that the feoffee shall hold the same of the chief lord of the fee, by such service and customs as his feoffee held. And by c. 2. if he sell any part of such lands, the feoffee shall hold it of the chief lord, and shall be charged with the services for so much as pertaineth to the chief lord for the same parcel, ac-

*Alienation of
lands allowed—
but to be held
of the chief lord.*

18 Edw. 1. st. 1.
c. 1. & 2.
E. & I.

c. 3.

And not to be in mortmain.

according to the quantity of the land sold; and the same part of the service shall remain to the lord, to be taken by the hands of the feoffee, for which he ought to be attendant to the same chief lord, for the parcel of the service so due. But by c. 3. it is to be understood that by said sales, such lands or tenements shall in no wise come into mortmain, either in part or in the whole, contrary to the 7 Edw. 1.: and that this statute extendeth only to lands holden in fee simple. But so much of this statute as related to feudal services, as also the 1 Edw. 3. c. 12. E. & I. which further permitted the king's tenants *in capite* to alien upon payment of a reasonable fine to the king, are rendered obsolete by the 12 Car. 2. c. 24. Eng. and 14 & 15 Car. 2. c. 19. Ir. which abolished the tenure *in capite*, and all fines for alienation as incident thereto.

*Conveyances good without attornment.*4 Ann. c. 16.
s. 9. & 10.
Eng.6 Ann. c. 10.
s. 9. & 10. Ir.

The feudal obligation which restrained the lord from alienating his seignory without the consent of his tenant, and which consent of the vassal was called attornment, has been also done away by the 4 Ann. c. 16. s. 9. & 10. Eng. which enacts that all grants or conveyances, by fine or otherwise, of manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual to all intents, without any attornment of the tenants of such manors, or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions, &c., shall be expectant or depending: provided that no such tenant shall be prejudiced by payment of any rent to any such grantor or conusor, or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant by the conusee or grantee. To which the 6 Ann. c. 10. Ir. contains corresponding provisions. And the 15 Geo. 2. c. 8. s. 7. & 8. Ir. in like manner as the 11 Geo. 2. c. 19. s. 11. Eng. provides, that all fraudulent attornments of tenants, to strangers claiming title to the estates of their respective landlords or lessors, shall be void, and the possession of such landlords, &c., not affected thereby: provided that nothing herein shall vacate or affect any attornment made pursuant to some judgment

*Attornment of tenants to strangers void.**Exceptions.*

judgment at law, or decree or order of a court of equity; or made with the privity and consent of the landlord or lessor, or to any mortgagee after the mortgage is become forfeited.

CHAP. XIII.

Of Alienation by Deed.

WITH respect to the consideration upon which deeds must be founded: The 13 Eliz. c. 8. s. 3. Eng. recites the 37 Hen. 8. c. 9. Eng. by which it was enacted, that no person should by way or mean of any corrupt bargain, loan, exchange, chevissance, shift, interest, of any wares, merchandizes, or other thing, or by any other corrupt or deceitful way or mean, or by any covin, engine, or deceitful way or conveyance, have or take, for the forbearing or giving day of payment of one whole year of and for his money or other things that shall be due for the same wares, &c., above £10 in the hundred, and so after that rate, of and for a more or less sum, or for a longer or shorter time; and enacts that all bonds, contracts, and assurances, collateral or other, to be made for payment of any principal or money to be lent, or covenant to be performed, upon or for any usury in lending, or doing of any thing against the 37 Hen. 8. c. 9. (which was repealed by the 5 & 6 Edw. 6. c. 20. Eng. and revived by this act) upon or by which loan or doing there shall be reserved or taken above the rate of £10 for the hundred, for one year, (since reduced to £5 *per cent.* by the 12 Ann. st. 2. c. 16. Eng.) shall be void. And by s. 7. the said statute hereby revived shall be most largely and strongly construed for the repressing of usury, and against all persons that shall offend against the true mean-

Deeds founded upon usurious considerations void.

13 Eliz. c. 8. s. 3. & 7, Eng.

10 Car. 1. st. 2.
c. 22. Ir.

13 Eliz. c. 5.
Eng.

*Conveyances to
defraud, &c.,
creditors and
others void.*

s. 3.

* "or" in the
10 Car. 1. st. 2.
c. 3. s. 11. Ir.

s. 4.

s. 5.

s. 6.

27 Eliz. c. 4.
Eng.

ing of the said statute, by any way or device, directly or indirectly. The 10 Car. 1. st. 2. c. 22. Ir. in like manner avoids all such usurious contracts: but the other provisions of these statutes, imposing certain penalties and forfeitures upon persons guilty of this offence of usury, will be stated in another place. By the 13 Eliz. c. 5. Eng. every feoffment, gift, alienation and conveyance, of lands, &c. or goods, or of any lease, rent, or common, or other profit or charge out of the same, by writing or otherwise, and every bond, judgment, and execution, to be had to the intent to delay, hinder, or defraud, creditors, or others, of their just actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, shall be (only as against that person, his heirs, successors, executors, administrators, and assigns, whose actions, &c., by such fraudulent practices might be delayed, or defrauded,) of none effect. And by s. 3. the parties to such fraudulent feoffment, &c., and other things before expressed, [*and] being privy and knowing of the same, which shall wittingly and willingly put in ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had, or made, *bona fide*, and upon good consideration, to the disturbance of such purchasers, &c. or of such as claim by or under them; or shall alien or assign any the lands, &c., to them conveyed as aforesaid, or any part thereof, shall incur the penalty of one year's value of the said lands, &c., and the whole value of the goods and chattels, and also so much money as shall be contained in such covinous and feigned bond; one moiety to the crown, and the other to the party grieved, to be recovered in any court of record by action of debt, &c.; and being thereof lawfully convicted, shall suffer imprisonment for one half year, &c. But by s. 4. common recoveries shall be of like force as if this act had not been made: and by s. 5. this act shall not make void any estate by reason whereof any person shall use any voucher in any writ of *formedon*: nor by s. 6. shall this act extend to any estate or interest in lands, or goods, made upon good consideration, and *bona fide*, to any persons, &c., not having notice of such fraud. And the 27 Eliz. c. 4. Eng. further enacts, that every

every conveyance, charge, lease, estate, incumbrance, and limitation of use, of any lands, &c. made for the intent to defraud and deceive such persons, &c. as have purchased, or shall purchase, in fee-simple, fee-tail, for life, lives or years, the same lands, &c. or to defraud, &c. such as have or shall purchase any rent or profit out of the same, shall be deemed (only as against that person, &c. and others claiming under him which shall purchase for money or other good consideration the same lands, &c. or any part thereof, or any rent, &c. out of the same) to be utterly void. And by s. 3. the parties to such fraudulent conveyances, &c. or being privy and knowing of the same, which shall wittingly and willingly put in ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had, or made, *bona fide*, or upon good consideration, to the disturbance of such purchasers, lessees, or grantees, or of such as claim any thing by, from, or under them,* shall incur the forfeiture of one year's value of the said lands, &c. so purchased or charged; one moiety to the crown, and the other to the party grieved, to be recovered in any court of record, by action of debt, &c.; and being thereof lawfully convicted, shall suffer imprisonment for one half year. But by s. 4. this act shall not defeat any conveyance, &c. made for good consideration, and *bona fide*. By s. 5. if any person shall make any conveyance, &c. of any lands, &c. with any clause of revocation, determination or alteration at his pleasure, and after such conveyance shall sell, demise, convey, or charge the same lands, for money or other good consideration, (the said first conveyance not revoked, made void, or altered,) then said former conveyance, &c. against the said vendees, lessees, grantees, and those claiming under them, shall be void: but by s. 6. no lawful mortgage made *bona fide*, upon good consideration, shall be impeached by this act. The 10 Car. 1. st. 2. c. 3. Ir. has incorporated both these statutes against covinous and fraudulent conveyances; and contains provisions corresponding to these above stated.

Conveyances to defraud, &c. purchasers, void.

s. 3.

* "or to their use or uses" in the 10 Car. 1. st. 2. c. 3. s. 2. Ir.

s. 4.

s. 5.

Conveyances with clause of revocation void against purchasers, &c.

s. 6.

10 Car. 1. st. 2. c. 3. Ir.

"For

Parol leases,
&c. shall have
the force of es-
tates at will only.
29 Car 2. c. 3.
s. 1. Eng.

s. 2.

Except leases
not exceeding
3 years, &c.
s. 3.

No leases, &c.
to be assigned or
surrendered un-
less by some
writing.

7 W. 3. c. 12.
s. 1. Ir.

By what words
a feoffor shall
be bound to
warranty.

4 Edw. 1. st. 3.
c. 6. E. & I.

6 Edw. 1. c. 3.
E. & I.

Warranty of
tenant by the
curtesy, void.

“For prevention of many fraudulent practices, which are commonly endeavoured to be upheld by perjury, and subornation of perjury;” the 29 Car. 2. c. 3. s. 1. Eng. enacts that all leases, estates, interests of freehold, or terms of years, or any uncertain interest in any lands, &c. made by livery and seisin only, or by parol, and not put in writing, and signed by the parties making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force of leases or estates at will only, and shall not in law or equity be deemed to have any greater effect; any consideration for making such parol leases or estates notwithstanding. But by s. 2. all leases not exceeding the term of 3 years from the making thereof, whereupon the rent reserved shall amount unto 2-3ds at least of the full improved value of the thing demised, are excepted. And by s. 3. no leases, estates, or interests, either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest, of or in any lands, &c. shall be assigned, granted, or surrendered, unless it be by deed, or note in writing, signed by the party so assigning, &c. or their agents thereunto lawfully authorized in writing, or by act and operation of law: with which clauses the 7 W. 3. c. 12. s. 1. Ir. is literally corresponding.

Next as to the warranty in deeds: By the 4 Edw. 1. st. 3. c. 6. E. & I. (which was before the statute of *quia emptores*) in deeds where is contained *dedi et concessi tale tenementum* without homage, or without a clause that containeth warranty, and to be holden of the givers and their heirs, by a certain service, the givers, and their heirs, shall be bound to warranty. And where is contained *dedi et concessi*, &c. to be holden of the chief lords of the fee, or of others, and not of feoffors, or of their heirs, reserving no service, without homage, or without the aforesaid clause, their heirs shall not be bounden to warranty, notwithstanding the feoffor during his own life, by force of his own gift, shall be bound to warrant. By the 6 Edw. 1. c. 3. E. & I. if a man alien a tenement that he holdeth by the law of England, his son shall not be barred by the deed of his father, (from whom no heri-
tage

tage to him descended) to recover by writ of *mort-d'ancestor* of the seisin of his mother, although the deed of his father doth mention that he and his heirs be bound to warranty. And if any heritage descend to him of his father's side, then he shall be barred for the value of the heritage that is to him descended. And if in time after, any heritage descend to him by the same father, then shall the tenant recover against him of the seisin of his mother by a judicial writ to re-summon his warranty, as before hath been done in cases where the warrantor cometh into court saying, that nothing is descended from him by whose deed he is vouched. And in like manner the issue of the son shall recover by writ of *cosinage*, *aiel* and *besaiel*. Likewise the heir of the wife shall not be barred of his action after the death of his father and mother, by the deed of his father, if he demand by action the inheritance of his mother by a writ of entry, which his father did alien in the time of his mother, whereof no fine is levied in the king's court. The 11 Hen. 7. c. 20. Eng. next provides, that if any woman which shall have an estate in dower, or for term of life, or in tail, jointly with her husband, or to herself, or to her use, in any lands, &c. of the inheritance or purchase of her husband, or given to the husband and wife in tail, or for life, by any of the ancestors of the husband, or by any person seised to the use of the said husband or his ancestors, shall, being sole, or with any after taken husband, discontinue, alien, release, or confirm with warranty, or by covin suffer any recovery of the same, all such discontinuances, recoveries, alienations, and warranties shall be void; and it shall be lawful to every person to whom the inheritance after the decease of such women should appertain, to enter as if no such discontinuance, &c. had been made; and if any of the said husbands and women, or any other seised to their use as aforesaid, do make or suffer any such discontinuance, &c. it shall be lawful to the persons to whom the tenements should belong after the decease of the said women, to enter according to such title, as if the same women had been dead: provided that the said women,

after

11 Hen. 7.
c. 20. Eng.
10 Car. 1. st. 2.
c. 8. s. 3. Ir.

Warranties, &c.
of tenant in
dower, void.

after the decease of their said husbands, may re-enter according to their first estate: And if the woman at the time of such discontinuance, &c. be sole, she shall be barred of her title, and the person to whom the title should belong after the decease of the woman, shall immediately enter. Provided that this act extend not to any such discontinuance, &c. to be had with the heirs next inheritable to the woman, or where they, that next after the death of the woman should have estate of inheritance in the lands, &c. be assenting to the said recoveries, where the same assent is of record, or inrolled: provided also that it shall be lawful to every such woman, being sole or married, after the death of her first husband, to give, sell, or make discontinuance, for term of her life only. This statute has been adopted in Ireland by the 10 Car. 1. st. 2. c. 8. s. 3. Ir. The 6 Ann. c. 10. s. 19. Ir. provides in like manner as the 4 Ann. c. 16. s. 21. Eng. that all warranties made by any tenant for life of any lands, &c. the same descending or coming to any person in reversion or remainder, shall be void; and all collateral warranties, made of any lands, &c. by any ancestor who has no estate of inheritance in possession in the same, shall be void against his heir.

4 Ann. c. 16.
s. 21. Eng.
6 Ann. c. 10.
s. 19. Ir.

*Warranties of
tenant for life,
&c. void.*

§ 2.

*Statute en-
abling tenants
in tail, &c. to
make certain
leases.*

32 Hen. 8.
c. 28. Eng.

s. 2.

II. By the 32 Hen. 8. c. 28. Eng. (called the enabling statute) all leases to be made of any lands, &c. by writing indented under seal, for term of years, or for life, by persons of full age, of 21, having any estate of inheritance either in fee-simple or fee-tail, in their own right, or in right of their churches or wives, or jointly with their wives, shall be good in law against the lessors, their wives, heirs and successors. But by s. 2, this act shall not extend to any lease of any lands, &c. being in the hands of any fermor by virtue of an old lease, unless such old lease be expired, surrendered, or ended, within one year after the making of the new lease; nor extend to any grant of any reversion; nor to any lease of lands which have not most commonly been letten to ferm by the space of 20 years next before such lease made; nor to any lease to be made without impeachment of waste; nor to any lease to be made above the number of 21* years, or 3 lives,

* "41 years"
in the 10 Car. 1.
st. 3. c. 6. ir.

lives, from the day of making thereof; and upon such lease there shall be reserved, yearly, so much^r rent or more, as hath been most accustomedly paid, for the lands so to be letten, within 20 years next before: and every person to whom the reversion shall appertain after the deaths of such lessors, shall have the like remedy against the lessees, their executors and assigns, as the lessor might have had. And it is provided (s. 3.) that the wife shall be made a party to every such lease made by her husband, of any lands being the inheritance of the wife; and that every such lease be made by indenture in the name of the husband and wife, and that she seal the same; and that the rent be reserved to the husband and wife, and to the heirs of the wife, according to her estate; and that the husband shall not alien or discharge the rent longer than during the coverture, without it be by fine levied by the husband and wife. By s. 4. this act shall not give power to any person to take more farms than he might have done;* nor to any parson or vicar to make any lease of any hereditaments belonging to their churches or vicarages, otherwise than they might have done. The 10 Car. 1. st. 3. c. 6. Ir. is the corresponding statute in Ireland; such distinction, as is noted in the margin, is however to be observed; and the last clause (s. 4.) of the 32 Hen. 8. above stated, is peculiar to this English statute. And with respect to incorporeal hereditaments the 5 Geo. 3. c. 17. Eng. in like manner enacts, that all leases for 1, 2, or 3 lives, or 21 years, of any tithes, tolls, or other incorporeal hereditaments, solely, and without any lands or corporeal hereditaments, by any archbishop or bishop, master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and every other person who is enabled to make leases of any lands, tenements, or other corporeal hereditaments, shall be as effectual against such archbishop and other persons, as leases of any lands or other corporeal hereditaments by the 32 Hen. 8. c. 28. *supra*. But by

s. 3.

s. 4.

10 Car. 1. st. 3.
c. 6. Ir.5 Geo. 3. c. 17,
Eng.*Leases of incorporeal hereditaments may be for 3 lives, or 21 years.*

* This clause seems to refer to the 25 Hen. 8. c. 13. Eng. which restrained persons from taking more than 2 farms, and which also limited the number of sheep to be kept on such farms.

s. 2.

by s. 2. nothing herein shall enable any master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, or other ecclesiastical persons as aforesaid, to grant leases for any other terms than, by the local statutes of their several foundations, they are now enabled to do. And by s. 3. in case the rent reserved

s. 3.

Action for arrears.

by leases, in pursuance of the several acts already in being, or by this present act, shall be unpaid by the space of 28 days after the days whereon the same is payable, it shall be lawful for such archbishop, &c. or their executors, administrators, and successors respectively, to bring actions of debt against the lessees, or their heirs, executors, administrators or assigns, for recovering the rent in arrear. To which there is no act corresponding in Ireland.

Bishops disabled to set leases for longer term than 21 years, or 3 lives.

1 Eliz. c. 19.
s. 5. Eng.

Next as to the disabling statutes: By the 1 Eliz. c. 19. s. 5. Eng. all gifts, grants, feoffments, fines, or other conveyance or estates, by any archbishop or bishop, of any lands, &c. being parcel of the possessions of his bishoprick, to any person (other than to the crown) whereby any estate may pass, other than for 21 years, or 3 lives, from such time as such lease, &c. shall begin, and whereupon the old accustomed yearly rent, or more, shall be reserved, shall be void. But the exception in this statute in favor of the crown, has been done away by the

2 Jac. 1. c. 3.
Eng.

2 Jac. 1. c. 3. Eng. which enacts that all grants, leases, charges, and conveyances, to the king, by any archbishop or bishop, of any of the possessions of such bishoprick, and every confirmation of the same, shall be void.

13 Eliz. c. 10.
s. 3. Eng.

By the 13 Eliz. c. 10. s. 3. Eng. all leases, gifts, grants, feoffments, conveyances, or estates, to be made by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, (which by the 14 Eliz. c. 14. Eng. is declared to include all hospitals, *maison dieux*, bead houses, and other houses for relief of the poor) parson, vicar, or any other having any ecclesiastical living, of any lands, &c. being parcel of the possessions of such college, church, chapter, hospital, or spiritual promotion, other than for 21 years, or 3 lives, from the time that such

Other ecclesiastical persons in like manner disabled.

lease

lease shall be granted, whereupon the accustomed yearly rent, or more, shall be reserved during the term, shall be void. But by s. 4. this act shall not make good any lease to be made by any college for more years than are limited by the private statutes of the college. And by s. 5. this act shall not extend to any lease to be made upon surrender of any lease heretofore made, or by reason of any covenant in any lease now continuing, so that the lease to be made do not contain more years than the residue of the years of the former lease, nor less rent than is reserved in such former lease. And the 14 Eliz. c. 11. s. 17. Eng. recites this statute, and declares that it shall not extend to any grant, assurance, or lease of houses in any city, borough, or market town, or their suburbs, nor to any ground appertaining to such houses, so that such houses be not the dwelling houses used for the habitation of the said persons (mentioned in the 13 Eliz. c. 10.) nor have ground to the same belonging above 10 acres. But by s. 19. no lease shall be made by force of this act in reversion, nor without reserving the accustomed yearly rent at the least, nor without charging the lessee with the reparations, nor for longer term than 40 years; nor shall any houses be permitted to be aliened, unless that in recompense thereof there shall be afore, or presently after such alienation, good assurance made in fee simple to such colleges, houses, bodies corporate, and their successors, of lands of as great yearly value. And the 13 Eliz. c. 10. is further explained by the 18 Eliz. c. 11. Eng. which enacts (s. 2.) that all leases to be made by any spiritual or collegiate persons of their spiritual or collegiate lands, &c. whereof any former lease is in being, not to be surrendered or ended within 3 years after making such new lease, shall be void.* And by s. 3. every bond or covenant for renewing or making any lease contrary to this act, or the 13 Eliz. c. 10. shall be void. With respect to college leases the 18 Eliz. c. 6. Eng. further provides that no master, provost, president, warden, dean, governor, rector or chief ruler, of any college, cathedral church,

s. 4.

Exceptions.

s. 5.

14 Eliz. c. 11.

s. 17. Eng.

Exception as to houses in towns.

s. 19.

18 Eliz. c. 11.

s. 2. Eng.

s. 3.

18 Eliz. c. 6.
Eng.*Upon college leases 1-3d part of the rent shall be reserved in corn.*

* The 13 Eliz. c. 20. Eng. together with all explanations, additions, and alterations thereof made by the 14 Eliz. c. 11. 18 Eliz. c. 11. and 43 Eliz. c. 9. and the 3 Car. 1. c. 4. so far as it perpetuated them, are repealed by the 43 Geo. 3. c. 84. s. 10. E.

hall or house of learning in the universities, nor any provost or other head officer of the colleges of Winchester or Eton, nor the corporation of any of them, shall make any lease for life or years of their lands or other hereditaments to which any tithes, arable land, meadow, or pasture, shall appertain, except 1-3d of the old rent be reserved in corn, viz. in good wheat, after 6s. 8d. the quarter or under, and good malt at 5s. the quarter or under, to be delivered yearly at the said colleges, &c. and for default thereof to pay to the said colleges, &c. in ready money, at the election of the lessees, after the rate of the best wheat and malt in the market of Cambridge, for the rents there; and in the market of Oxford for the rents there; and in the market of Winchester for the rents there; and in the market of Windsor for the rents to be paid to the houses at Eton; sold the next market day before the rent shall be due, without fraud. And all leases otherwise to be made, and all collateral bonds or assurances to the contrary, shall be void. The same wheat, malt, or money, to be expended to the relief of the commons and diet of the colleges, &c. only; and by no fraud let or sold away from the profit of the said colleges, &c. and the fellows and scholars in the same, and the use aforesaid; upon pain of deprivation of the governor and chief rulers of the said colleges, &c. and all other consenting. These several acts are explained and amended by the 40 Geo. 3. c. 41. Eng. which enacts (s. 1.) that where any lands, &c. being parcel of the possessions of any archbishop, bishop, master and fellows, dean and chapter, master or guardian of any hospital, or any person, &c. having any ecclesiastical living or promotion, and having been anciently or accustomably demised, by one lease under one rent, or divers rents issuing out of the whole, are or shall be demised by several leases to one or several persons, under an apportioned or several rents; or where a part only of such lands, &c. shall be demised by a separate lease or leases, under a less rent than was accustomably reserved for the whole by such former lease, and the residue thereof is or shall be retained in the possession of the lessor or lessors; the rent reserved

40 Geo. 3.
c. 41. s. 1. Eng.

*The several
rents reserved on
the separate de-
mises of specific
parts, shall be
deemed to be the
ancient rents.*

reserved on the separate demises of the several parts, shall be deemed to be the ancient and accustomed rents for such specific parts, within the meaning of the 32 Hen. 8. c. 28. 1 Eliz. c. 19. 13 Eliz. c. 5. and 14 Eliz. c. 11.

But by s. 2. nothing herein shall render valid any demise made before the passing of this act, unless the several rents reserved upon the separate demises of separate parts, theretofore accustomedly demised under one entire lease, shall be equal to or more than the rent theretofore accustomedly reserved on the entire demise of the whole; or in case the whole shall not be demised, unless the rents reserved on the parts demised should be so far equal to or more than the whole amount of the ancient rent, that the part not demised should be sufficient to answer the difference. And by s. 3. where the whole of any such lands, &c. accustomedly demised by one lease, shall be demised in parts by several leases, the aggregate amount of the several rents, shall not be less than the old accustomed rent reserved by such entire lease; and where a part only shall be so demised by such separate lease, and the residue shall be retained in the possession of the lessor, the rent to be reserved by such separate lease shall not be less, in proportion to the fine to be received on granting such lease, than the rent accustomed to be reserved for the whole of said premises, was in proportion to the fine received on granting the last entire lease. Provided (s. 4.) that no greater proportion of the accustomed rent shall be reserved by any separate lease, hereby confirmed or allowed to be granted, than the part of the premises thereby severally demised will reasonably bear. And provided (s. 5.) that where any specific thing, incapable of division or apportionment, shall have been reserved to the lessor, his heirs or successors, by way of rent, or by any covenant or agreement contained in any entire lease, the same may be wholly reserved out of a competent part of such lands, &c. demised by such several lease; and in case in any lease already granted, and hereby intended to be confirmed, any such provision shall appear to have been made for the payment and delivery of any sum of money, stipend, augmentation, or other thing, the same shall be deemed to have been lawfully

s. 2.

But such several rents to amount to the rent accustomedly reserved on an entire demise.

s. 3.

s. 4.

s. 5.

Any specific thing may be wholly reserved out of a competent part of the premises.

made,

s. 6.

Provisoes.

s. 7.

s. 8.

Stipends, augmentations, &c. to be reserved out of parts of 3 times the annual value of such payments.

s. 9.

s. 10.

Persons holding such leases in trust, or granting under leases of specific parts under covenants of renewal, may surrender them, that separate leases may be granted by the original lessors to the cestui-que trusts, and under lessees.

made, in case the lands and tenements charged therewith shall be of greater annual value than the payment or other thing so charged, exclusive of the rent or other annual payment reserved to the lessor. By s. 6. nothing herein shall authorize or confirm any lease wherein no annual rent is or shall be reserved to the lessor, his successors or assigns: nor by s. 7. to authorize the reservation or payment of any rent upon any such several lease made or to be made under authority of this act, by any master, &c. of any college in the universities, &c. in any other manner than is required by the 18 Eliz. c. 6. Eng. *supra*. And it is provided (s. 8.) that where any such accustomedly entire leases shall have usually contained covenants on the part of the lessees for the payment or delivery, or shall have in any other manner charged such lessees with the payment or delivery, of any sum of money or other thing to or for the use of any vicar, curate, school-master, or other person, other than the lessor and his heirs or successors, all such leases as shall hereafter be granted of the same lands, &c. in severalty, shall and may provide for the future payment, &c. of such sum of money or other thing, out of any part of the lands, &c. accustomedly charged therewith, not being of less annual value than 3 times the amount of the payment so to be charged thereon, exclusive of the proportion of rent, &c. to be reserved to the lessor: provided (s. 9.) that nothing herein shall confirm the claim of any vicar, &c. to any such sum, &c. the payment and continuance whereof shall depend on the will of the person, &c. granting or renewing such lease. And by s. 10. where any person now holding or who shall hold any such lease as in this act mentioned, shall hold the same, or any part of the lands, &c. thereby demised, in trust for any person, &c. or shall have granted any under lease of any part of his holding, and be under any covenant or engagement for renewal thereof to any other person, &c. when and as often as his own lease shall be renewed, it shall be lawful for such person as first mentioned to surrender his lease, in order that separate leases may be granted by the original

nal lessor of such specific parts of the same, to the respective under-lessees and *cestuique trusts*, upon reasonable terms, subject to an apportionment of the accustomed rent, and other payments, according to the intent of this act; and every such surrender, and the new leases to be granted thereon, shall be good in law and equity, notwithstanding such under lessees and *cestui-que trusts*, or any of them, shall be infants, issue unborn, *femes covert*, persons absent from the realm, or otherwise incapacitated to act for themselves, provided that such new leases be for the benefit of the several persons entitled to the benefit of such surrendered leases, and be so declared in the body of such new leases.

By the 10 & 11 Car. 1. c. 3. Ir. all feoffments, gifts, grants, leases, alienations, conveyances, estates, charges and incumbrances, made or suffered by any archbishops, bishops, deans and chapters, archdeacons, prebendaries, or other dignitaries ecclesiastical, parsons, vicars, masters and governors, and fellows of colleges, and masters, guardians, or other governors of hospitals, of any lands, &c. being parcel of the possessions of such archbishop, &c. (other than such leases and grants as in this act, or in any other act of this present parliament, are expressed) shall be void. But by s. 2. it shall be lawful for such archbishops, &c. to grant any ancient office concerning their land or other possessions, or concerning the attendance upon their persons or churches, together with the like pensions and other profits as were formerly accustomed to be granted therewith; and also by their writings indented under their respective seals of office,* demise any lands, &c. belonging to their respective churches, colleges, and hospitals, (the dwelling houses for the most part of 40 years now last past, used for any of their habitations, and the demesne lands thereunto belonging, and during said time commonly used as such, only excepted,) for the term of 21 years from the time of making thereof,

Conveyances, &c. by ecclesiastical persons contrary to this act void.

10 & 11 Car. 1. c. 3. Ir.

s. 2.

Ecclesiastical dignitaries, &c. may grant ancient offices, and demise lands, &c. for 21 years.

Exception.

* A counterpart whereof shall, by the 11 Geo. 2. c. 15. s. 2. Ir. be filed by the respective lessors, in their respective registries, for the benefit of their successors; for which the register shall receive from such lessees, 20s. to be recovered, in case of refusal, by civil bill; and on payment of such sum, the leases shall not be avoided for default of registry.

*Vide 35Geo.3.
c. 23. infra.

s. 3.

*Leases may be
for any term for
building for-
tresses, &c.*

*Or for 60 years
upon the surren-
der of long
leases, &c.*

*Or for 40 years
of houses in
towns.*

*Vide 1 Geo.2.
c. 15. s. 12. Ir.
infra.

s. 4.

thereof, whereof, or of any part whereof, there shall be no other lease or estate in being, which shall not expire within one year then next coming; upon which lease there shall be reserved, during the said 21 years, so much yearly rent or profit, or more, at the peril of the lessees, as the moiety* of the true value of said lands, &c. (*communibus annis*) at the time of making such lease, shall amount to, as the same shall appear upon a trial between the successors of such lessors, if they shall question the same, and the said lessees, or their assigns, by verdict of 12 indifferent persons; which verdict shall be peremptory to both parties, and their successors and assigns, during said term; in which leases shall be contained no power or privilege, for such lessees or their assignees, to commit waste, or to be dispunishable of waste. But by s. 3. it shall be lawful for said archbishops, &c. by the license of the chief governor and council of this kingdom, to make leases for a longer term than 21 years of any of their lands fit for building of castles, fortresses, or other houses of strength for the defence of this realm, for such term, and in such sort as the said chief governor and council shall think fit: and such archbishops, &c. may also in consideration of the re-assignment, surrender, and taking in of any fee-farms or long leases of any of their lands, &c. and upon farther improvement of the yearly rents and profits thereof, with the license of the said chief governor and council, make any lease for the term of 60 years, or under, of such fee-farm lands, and of such leased lands, for the like term, or for fewer years, if the leases in being were for fewer years: and it shall be likewise lawful for such spiritual persons, &c. to make any lease for the term of 40 years,* under the like valuable rent, of any houses belonging to their churches, colleges, or hospitals, and of the curtilages appertaining to the same, which are situate within any city, town corporate, or market town, so as the same be not of their mansion or dwelling houses, or of any part thereof, or of any curtilages, gardens, or orchards belonging thereto. By s. 4. the rents reserved upon any leases by virtue of this act, shall continue payable to the lessors and their

their successors, during such leases and terms, and shall not be aliened, released or discharged, to the prejudice of the successors. By the 1 Geo. 2. c. 15. s. 12. Ir. it shall be lawful for every rector, vicar, or other incumbent of any parish in any city or town corporate, with the consent of the patron of such parish, and ordinary of the diocess, to demise any house or ground to him belonging in such city, &c. for any term of years not exceeding 61, without fine, at the full improved rent, so as such lease be not made to commence *in futuro*, and so as the rent be reserved to such incumbent and his successors; and so as such house or ground so let be certified by the archbishop of the province, and bishop of the diocess, under their archiepiscopal and episcopal seals, to be over and above what is sufficient for the convenient residence of the incumbent; and so as such certificate and lease be entered in the registry of the diocess. And by s. 13. where any such lease shall be so made and entered, it shall be lawful for every such incumbent, for the time being, to renew such lease for any term of years not exceeding 40, so as the former rent be not lessened, without any new certificate from the archbishop or bishop: provided (s. 14.) that such renewed lease be entered in the registry of the diocess, where the house or ground shall lie. The 10 & 11 Car. 1. c. 3. Ir. is explained and amended by the 35 Geo. 3. c. 23. Ir. which empowers archbishops, &c. (as enumerated in the 10 & 11 Car. 1.) from time to time, to accept of a surrender of any lease of any lands or hereditaments belonging to their respective sees, churches, colleges, and hospitals, and thereupon to demise such lands, &c. (the dwelling houses used for their respective habitations, and demesne lands thereunto belonging, and therewith used as demesnes, only excepted) as by said act or any other act they are enabled to do, notwithstanding that upon such lease there shall not be reserved, and continued payable, unto the lessors and their successors, during the term of 21 years, so much yearly rent or more, as the moiety of the true value of the lands, &c. *communibus annis*, shall amount to. And by s. 2. all leases heretofore made by any such persons,

1 Geo. 2. c. 15. s. 12. Ir.

Incumbents in cities, &c. may demise for 61 years.

s. 13.

And renew for 40 years.

s. 14.

35 Geo. 3. c. 23. Ir.

Bishops, &c. may accept surrenders, and demise their lands, &c. tho' moiety of value not reserved.

s. 2.

*Confirmation of
certain leases
made contrary to
the 10 & 11
Car. 1.*

of any lands, &c. belonging to their respective sees, &c. except as before excepted, unto any person, in such manner as by said act or any other act they are enabled to do, shall be valid and good, notwithstanding there was another lease or estate then in being which did not expire, nor was determined, within the time in the 10 & 11 Car. 1. mentioned; and also notwithstanding that upon such lease there were not reserved and continued payable unto the lessors during the term of 21 years, so much yearly rent, or more, as the moiety of the true value of the lands, &c. *communibus annis*, at the time of making such leases, did amount to; provided that the yearly rent or profits reserved upon every lease heretofore made, or hereafter to be made, shall not be less than the yearly rent, &c. paid, and payable thereout, for the last 20 years preceding the making of such lease, whether such lands, &c. be augmentation lands or others. And by

*Rent not to be
less than that
paid for 20
years before.*

s. 3.

*Separate leases
may be executed
of several parts.*

s. 3. where any lands, &c. belonging to such archbishops, &c., shall have heretofore been, or hereafter be, demised by one lease only, and have been, or may be afterwards, separated and demised by 2 or more distinct leases, with distinct rents reserved thereon respectively; in such cases, whether such lands, &c. are augmentation lands or others, or both, every such separate lease shall be as valid, as the original one lease would have been: provided (s. 4.)

s. 4.

*But the aggre-
gate of such rents
to amount to that
reserved by ori-
ginal lease.*

that the several yearly rents reserved, or to be reserved on such separate leases, do amount together to a yearly rent and profit, not less than the yearly rent, &c. reserved by such one original lease: but nothing herein shall authorize any person, &c. to make any concurrent lease, other than what they could have made before the

*Exception as to
concurrent leases*

10 & 11 Car. 1.
c. 2. s. 7. Ir.

passing of this act. By the 10 & 11 Car. 1. c. 2. s. 7. Ir. all gifts, grants, alienations, leases, forfeitures, charges, and incumbrances, imposed or suffered by any minister, parson, vicar, or other beneficer having cure of souls in Ireland, of or upon his benefice, or any part thereof, shall be in force for such time only as such parson, &c. shall be resident upon his benefice, without absence from the same above 80 days in any one year. And all covenants, bonds, and other assurances, by any such benefi-

*Leases, &c. by
beneficers having
cure of souls, in
force only during
residence of
parson.*

cer,

cer, or collaterally for or on his behalf, for the enjoying of the profits or hereditaments of such benefices, or of any part thereof, for any longer time than as aforesaid, or whereby such beneficer shall be enforced to resign his benefice, and all assurances to be made, to the intent to force such beneficer to be resident, for the upholding of any grant, &c. made as aforesaid, shall be void. This clause was taken from the 13 Eliz. c. 20. Eng. 14 Eliz. c. 11. s. 15. Eng. and 43 Eliz. c. 9. s. 8. Eng. which were repealed by the 42 Geo. 3. c. 84. E. but this provision of the 10 & 11 Car. 1. was not repealed by the 48 Geo. 3. c. 66. I.* which extended to Ireland most of the provisions of the 42 Geo. 3. c. 84. for enforcing the residence of the clergy. The 6 Geo. 1. c. 14. Ir. recites this clause of the 10 & 11 Car. 1. and enacts that every deanery, arch-deaconry, dignity and prebend of a cathedral church, the corps whereof consists of one parish or more, or part or parts of a parish or parishes, where at present no vicarage is endowed or established, shall be so far reputed as a benefice having cure of souls within said recited act, as that no lease or grant of any part of the tithes, to such deanery, &c. belonging, hereafter to be made by any dean, &c. of any cathedral church, shall be good for any longer time than during the incumbency of such dean, &c. saving leases or grants before 1st July, 1719. And to prevent alienations of tithes it is enacted (s. 3.) that if any dignitary or prebendary of any cathedral church, or any other ecclesiastical person, being rector of any parish where there is a vicarage endowed, shall, after 6th August, 1719, set the tithes belonging to his respective dignity, prebend, or rectory, for any longer time than during his incumbency, except where such tithes have been set in lease for the greatest part of 30 years last past, such lease shall be void as to the successor. By the 39 Geo. 3. c. 14. s. 23. Ir. all leases or demises of tithes which shall be made after the passing of this act (7 May, 1799,) by any persons who are themselves entitled to such tithes by virtue of leases executed by ecclesiastical persons or bodies, rectors, vicars, curates, or impropriators, other than leases, &c. of the tithes to

Bonds, &c. for upholding such grants void.

* *Vide page 330.*

6 Geo. 1. c. 14 s. 1. & 2. Ir.

Deaneries, &c. where no vicarage endowed, to be deemed benefices with cure of souls.

s. 3.

Leases of tithes for longer time than during incumbency, void as to successor.

Exception.

39 Geo. 3. c. 14. s. 23. Ir.

Under leases of tithes void.

the actual occupiers of the lands subject to the payment of the tithes demised, shall be utterly void in law and equity.

*Bishops may
demise bog for 60
years.*

12 Geo. 1.
c. 10. s. 13, 14
& 15. Ir.

With respect to such large tracts of bog and fenny ground as are appertaining to the several archbishops and bishops of Ireland, the 12 Geo. 1. c. 10. s. 13, 14 & 15 Ir. enacts, that it shall be lawful for such archbishops, with the consent of the chief governor, under his hand and seal, and for such bishops, with the consent of the archbishop of the province, under his hand and archiepiscopal seal, to demise any parcel of such bog, &c. for any term not exceeding 60 years, in possession, without fine, reserving the best rent that can be got for such bog, &c. at the time of making such lease: provided that every such archbishop or bishop, over and above such bog, &c. so to be demised, shall be possessed of 300 acres, plantation measure, of good arable and pasture lands belonging to his dwelling house as demesne, and shall reserve a turbary sufficient for the use of such dwelling house, and the tenants of such demesne lands: and provided also that no such lease shall be renewed for any longer term than 21 years; and that at every such renewal the said land shall be set at 3-4ths of the full value at the time of such renewal. And by s. 16. as to such tracts of bog, &c. whereof such archbishops, &c. are seised in right of their archbishopricks, &c. not being parcel of their demesne, which have hitherto lain waste, and have usually been demised for 21 years with the lands or farms of such archbishops, &c. to which they lie contiguous, it shall be lawful for such archbishops and bishops, with such consent as aforesaid, to make separate leases of such tracts of bog, to the respective tenants of such lands or farms, or if out of lease, to any person whatsoever, for any term not exceeding 60 years, in possession, without fine, and at the highest rent that can be had for the same. But by s. 17. if any archbishop, &c. under colour of the powers hereby granted, shall include in such demises any of the profitable lands belonging to such farms, or shall lessen the yearly rent that now is, or at the time of making such lease of 60 years shall be reserved

s. 16:

*Though not
part of the de-
mesne of such
bishop.*

s. 17.

served upon such farm, to which such tracts of bog, &c. are adjoining; or include in any such lease any other lands belonging to their respective sees, in all such cases every such lease shall be void. And it is provided (s. 18.)

s. 18.

that from the expiration, surrender, or other determination of such lease to be made by virtue of this act, no other or longer lease of such boggy or fenny grounds, nor in any other manner, shall be made, than is prescribed by

No such lease to be executed after the first expires.

the 10 & 11 Car. 1. c. 3. *supra*. The 15 Geo. 2. c. 5. Ir. as amended by the 19 Geo. 2. c. 16. Ir. empowers the lord lieutenant of Ireland, on the application of any

15 Geo. 2. c. 5. Ir.
19 Geo. 2. c. 16. Ir.

archbishop, to grant a commission to 5 or more persons dwelling within 10 miles from the demesne lands of such archbishop, empowering them, or any 3 of them, to view

Lord Lieutenant may by commission allocate demesnes for arch-bishops.

all the demesne or mensal lands, and cause a survey to be taken, and map to be made thereof, and in such map to distinguish such part, not less than 250 acres, plantation measure, of said lands, as they shall judge fit and sufficient for a demesne for an archbishop of that see, and the nature and quality thereof, and to certify the same under their hands and seals to the lord lieutenant; in which commission a power shall be given to 2 or more justices of the county, in which said lands, or any part of them, shall lie, to administer an oath to the commissioners, justly and faithfully to execute the said commission according to the best of their skill and knowledge; on return of which certificate and map, it shall be lawful for the lord lieutenant, by writing under his hand and seal, to settle a proper demesne for such archbishop, not containing less than 250 acres plantation measure, and to cause a map thereof to be affixed to such writing; which writing, map, and certificate, shall be lodged in the council office; and a duplicate thereof lodged in the archbishop's registry; and the said lands so set out shall from thenceforth be the demesne or mensal lands belonging to said archbishop, and his successors; and from thenceforth such archbishop, &c. may demise the remaining part of said demesne lands, viz. such lands as lie within any town corporate or market town, or within half a mile thereof, for any term not exceeding 40 years,

Who may demise the residue.

in

in possession, and the rest of such lands for such term of years as, by the laws now in being, he is empowered to demise other lands belonging to said archbishoprick. Provided that the full yearly value of such part of the said demesne lands as shall be so demised, at the time of leasing the same without any fine, shall be reserved; and provided that no more than 10 acres, plantation measure, of such part of said demesne lands, as shall lie within any town corporate or market town, or within half a mile thereof, shall be demised to, or in trust or for the use of,

15 Geo. 2. c. 6.
s. 2. Ir.

*And archbishops
may by commis-
sion settle de-
mesnes for
bishops.*

any one person. And the 15 Geo. 2. c. 6. Ir. contains the like provisions in respect to the demesne or mensal lands of bishops, save that the power is given to the archbishop of the province (instead of the lord lieutenant) upon the application of the bishop to grant such commission, and upon the return of the certificate and map to him, to settle by writing, under his archiepiscopal seal, a proper demesne for such bishop, not exceeding 250 acres, profitable land plantation measure, for the support of his house, and keeping hospitality in said see; which writing, map, and certificate, shall be lodged in the registry of the archbishop, and a duplicate thereof in the bishop's registry. And this act (s. 4.) declares all such leases by any such archbishop or bishop, as shall include other lands of the see above half a mile from a town corporate or market town, or which shall demise above 10 acres to or in trust for one person, to be void.

s. 4.

*What leases
may be made,
and how, of
parish estates.*

37 Geo. 3.
c. 44. Ir.

By the 37 Geo. 3. c. 44. Ir. it shall be lawful for every incumbent of any parish, who is or shall be seised of any estate in fee-simple to him and his successors, in trust for such parish, to demise the said estate, or any part thereof, for any term of years not exceeding 41, with the consent of the ordinary of the diocess, and of the majority of the protestant parishioners of such parish in vestry assembled, without taking any thing by way of fine, at the full improved yearly rent, at the peril of the lessees who shall take the same; so as such lease be not made to commence *in futuro*, and so as in such lease there shall not be contained any power or privilege to commit waste, or to be dispunishable of waste; and so as there shall

shall not be any other lease of said estate, or any part thereof, which shall not expire or be determined within one year from the commencement of such new lease; and so as counterparts of such new lease be entered in the registry book of the ordinary of the diocess, and in the vestry book of the parish. And by s. 2. such consent of the ordinary of the diocess shall be written at the foot or on the back of every such lease, or in a schedule annexed thereto, subscribed with his hand, and sealed with his archiepiscopal or episcopal seal; and such consent of the protestant parishioners shall be written at the foot, or on the back of such lease, or in a schedule to be annexed thereto, and subscribed by the church-wardens for the time being, and by 2 other protestant parishioners, to be elected by the majority of protestant parishioners in vestry assembled, and appointed as their attornies or proctors for that purpose, and sealed with their seals respectively; and they shall therein specify the year, month, and day, on which the protestant parishioners in vestry assembled consented to such lease, and on which such consent was entered in the vestry book.

By the 4 Geo. 2. c. 28. s. 6. Eng. in case any lease shall be surrendered in order to be renewed; and a new lease executed by the chief landlord, the new lease shall, without a surrender of the under-leases, be as valid as if all the under-leases had been surrendered; and every person in whom any estate for life, or years, shall be vested by virtue of such new lease, shall be entitled to the rents and duties, and have like remedy for the recovery thereof, and the under-lessees shall hold and enjoy the lands, &c. as if the original leases had been kept on foot; and the chief landlord shall have the same remedy, by distress or entry, for the rents, &c. reserved by such new lease, so far as the same exceed not the rents, &c. reserved in the lease out of which such under-lease was derived, as they would have had in case such former lease had been continued, or the under-leases had been renewed under such new lease. The 5 Geo. 2. c. 4. Ir. contains the same provision. It is one of the provisions (s. 11.) of the *17 & 18 Geo. 3. c. 49. Ir.

Leases may be renewed without surrender of under-leases.

4 Geo. 2. c. 28. s. 6. Eng.

5 Geo. 2. c. 4. s. 1. Ir.

* This clause seems to extend to leasing powers in general, though the other clauses relate only to catholics.

17& 18 Geo. 3.
c. 49. s. 11. Ir.

*Persons having
powers to make
leases for lives,
may let for
years determin-
able on lives.*

11& 12 Geo. 3.
c. 21. s. 2. Ir.

*Tenants for life,
&c. may demise
bog for 61 years.*

Exception.

*Other powers
given to tenants
for life, &c.*

** Vide Ball's
Index, tit.
Leases, Glebes.*

§. 3.

*The possession
of lands, &c.
shall be in him
that has the use.*

27 Hen. 8. c. 10.
s. 1. Eng.

c. 49. Ir. and proper to be stated in this place, that any persons who have power under settlements to make leases for one or more life or lives, shall have the like power to let for any number of years determinable on one life, or such number of lives, as in such settlements mentioned, subject however to every proviso, condition, and restriction, in said settlements contained concerning such leases.

And it is a provision (s. 2.) of the 11 & 12 Geo. 3. c. 21. Ir. (the other clauses of which statute have been already stated, *ante* p. 503-4.) that every tenant for life, archbishop, bishop, and body corporate, ecclesiastical or civil, may make leases of any unprofitable bog for the purpose of reclaiming the same, and also of any quantity of land, not exceeding one half of an acre as a site for a house, or for the purpose of delving for gravel or limestone for manure, next adjoining to such bog, for any term not exceeding 61 years, at such rent as shall be agreed upon: provided that no greater quantity of such bog be set to any one person than 50 acres, plantation measure; and provided that from the expiration, surrender, or other determination of such lease, no longer lease of such bog shall be made by any ecclesiastical person, or body corporate, than is prescribed by the 10 & 11 Car. 1. c. 3. *ante*. There are several statutes in Ireland giving power to ecclesiastical persons, tenants for life, and other particular estates, to make leases in perpetuity, for certain public or national purposes: *And by other statutes a special leasing power is given.

III. The statute of *uses*, 27 Hen. 8. c. 10. Eng. (which has superseded the several statutes in the margin†) enacts, that where any person shall be seised of any lands or other hereditaments, to the use or trust of any other person, &c. by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will, or otherwise; every such person, &c. that shall have such use, &c. in fee-simple, fee-tail, for term of life, or for years, or otherwise,

† 50 Edw. 3. c. 6. 1 Ric. 2. c. 9. 2 Ric. 2. st. 2. c. 3. 4 Hen. 4. c. 7. 11 Hen. 6. c. 3 & 5. 1 Ric. 3. c. 1. & c. 5. 1 Hen. 7. c. 1. 4 Hen. 7. c. 17. 19 Hen. 7. c. 15.

wise, or in remainder or reverter, shall stand seised, and be deemed to be in lawful seisin, estate, and possession, of such lands, &c. with their appurtenances, of and in such like estates as they shall have in use or trust in the same; and the estate and possession that was in such person so seised to the use or trust, &c. shall be adjudged to be in him that shall have such use or trust, after such quality, manner, form, and condition, as he had before in the use. And by s. 2. & 3. where divers persons shall be jointly seised to the use or trust of any of them, those which shall have such use or trust, shall be adjudged to have only such estate, possession and seisin of the lands, &c. as they had in the use or trust; saving to all persons, other than those which shall be seised to any use or trust, all such right, &c. as they might have had before the making of this act; and saving also to all persons, and their heirs, which shall be seised to any use, all such former rights, as they might have had to their own proper use, &c. And by s. 4. & 5. where divers persons be seised to the use and intent that some other persons shall have an annual rent out of the lands, &c. they, their heirs and assigns, shall be adjudged to be in possession and seisin of the same rent, of and in such estate as they had in the use of the said rent or profit, and as if a sufficient grant or conveyance had been made to them by such as shall be seised to such use or intent; and every such person as shall have any use or interest in or to any such rent or profit, shall lawfully distrain for non-payment thereof, and in their own names make avowries, or by their bailiffs or servants make conusances and justifications, and have all other remedies, as if the same rents had been actually granted to them, with sufficient clauses of distress, re-entry, or otherwise. Provided (s. 10.) that this act shall not discharge or suspend any statute, recognizance, or other bond, by the execution of any estate in any lands, &c. The 10 Car. 1. st. 2. c. 1. Ir. (which supersedes also the 5 Edw. 4. c. 1. Ir.) contains corresponding provisions to those above stated.

s. 2. & 3.

s. 4. & 5.

*Cestui que use
of rents may
distrain, avow,
&c.*

s. 10.

10 Car. 1. st. 2.
c. 1. Ir.

IV. With respect to *trusts*, the Statute of Frauds, 29 Car. 2. c. 3. s. 7. Eng. enacts, that all declarations or

§ 4.
*Declarations or
creations of
trusts to be in
writing.*

creations

29 Car. 2. c. 3.
s. 7. Eng.

s. 8.

Trusts by impli-
cation excepted.

s. 9.

Assignment of
trusts to be in
writing.

s. 10.

Lands, &c.
liable to the
judgments, &c.
of cestui-que-
trust only.

Trusts assets in
the hands of
heirs.

s. 11.

Heir not thereby
chargeable out
of his own estate.

7 W. 3. c. 12.
s. 4. to 8. Ir.

creations of trusts of any lands, &c. shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing; or else they shall be void. Provided (s. 8.) that where any conveyance shall be made of any lands or tenements by which a trust shall arise or result by implication or construction of law, or be transferred or extinguished by an act or operation of law, such trust shall be of the like effect as if this statute had not been made. And by s. 9. all grants and assignments of any trust, shall likewise be in writing, signed by the party granting or assigning the same, or by such last will or devise; or else shall be void. By s. 10. it shall be lawful for every sheriff or other officer to whom any writ or precept is directed upon any judgment, statute, or recognizance, to deliver execution unto the party suing, of all such lands, &c. as any other person be in any manner seised or possessed in trust for him against whom execution is so sued, as if the party against whom execution shall be sued had been seised of such lands, &c. of such estate as they be seised of in trust for him at the time of the execution sued; which lands, &c. shall be accordingly held, freed from all incumbrances of such person seised or possessed in trust. And if any *cestui-que-trust* shall die, leaving a trust in fee-simple to descend to his heir, such trust shall be assets by descent, and the heir shall be chargeable with the obligation of his ancestor, as if the estate in law had descended to him in like manner as the trust. Provided (s. 11.) that no heir, that shall be chargeable by reason of any estate or trust made assets in his hands by this law, shall by reason of any plea or confession of the action, or suffering judgment by *nient dedire*, or other matter, be chargeable to pay the condemnation out of his own estate; but execution shall be sued of the whole estate so made assets, in whose hands soever it shall come after the writ purchased, in the same manner as at common law, where the heir pleading a true plea judgment is prayed against him thereupon. These several provisions are also contained in the 7 W. 3. c. 12. Ir.

Next

V. Next as to deeds of *bargain and sale*: by the 27 Hen. 8. *Bargains and sales of lands to be inrolled, &c.* c. 16. Eng. no lands, &c. shall pass from one to another, whereby any estate of inheritance or freehold shall be made or take effect in any person, or any use thereof be made, by reason only of any bargain and sale thereof, except the same be made by writing indented, sealed, and inrolled in one of his majesty's courts of record at *Westminster, or else within the county where said lands lie, before the *custos rotulorum*, and 2 justices, and the clerk of the peace of such county, or 2 of them at the least, whereof the clerk of the peace to be one; and such inrolment to be made within 6 months next after the date of the writing indented: the same *custos rotulorum*, or justices of the peace, and clerk, taking for every such inrolment, 2s. where the land comprised in such writing exceeds not the yearly value of 40s. viz. 12d. to the justices, and 12d. to the clerk; and where the land comprised exceeds 40s. yearly value, 5s. viz. 2s. 6d. to the justices, and 2s. 6d. to the clerk. And the clerk of the peace within every county, shall sufficiently inroll and ingross in parchment the same deeds or writings indented; and the rolls thereof at the end of every year shall deliver to the *custos rotulorum* of said county, there to remain in his custody amongst the records of such county, to the intent that every party may resort and see the tenor thereof. But by s. 2. this act shall not extend to lands, &c. within any city, borough, or town corporate, wherein the mayors, recorders, or other officers, have authority to inroll deeds, &c.* This statute is incorporated in the 10 Car. 1. st. 2. c. 1. Ir. For supplying a failure in pleading or deriving title to lands, &c. where the original indentures of bargain and sale are wanting, the 10 Ann. c. 18. s. 3. Eng. provides, that where in any declaration, avowry, bar, replication, or other pleading, any such indenture of bargain and sale inrolled, shall be pleaded with a *profert in curia*, the person so pleading may produce, to answer such *profert*, as well against the crown, as any other person, a copy of the inrolment of such bargain and sale; and

*Dublin, in 10 Car. 1. st. 2. c. 1. Ir.

s. 2.

10 Car. 1. st. 2. c. 1. s. 17, 18. Ir.

10 Ann. c. 18. s. 3. Eng.

A copy of such inrolment evidence.

* The 5 Eliz. c. 26. Eng. prescribes the mode of inrolling bargains and sales within the counties of Lancaster, Chester, and Durham.

and such copy examined with the inrolment, and signed by the proper officer having the custody of such inrolment, and proved upon oath to be a true copy, shall be of the same force as the indenture of bargain and sale, if the same were produced. No such statute has been passed in Ireland; but the 9 Geo. 2. c. 5. s. 6. Ir. recites that purchasers for valuable considerations under deeds of lease and release, have been prevented from recovering their rights, for want of being able to produce the lease for a year (or rather bargain and sale) which is often lost or mislaid: and therefore enacts, that the recital of a lease for a year in the deed of release, shall be sufficient evidence of such lease: which is a law of evidence peculiar to Ireland. And by the 1 Geo. 3. c. 3. s. 2. Ir. in pleading deeds of lease and release, wherein it may be necessary to allege the bringing such deeds into court, it shall be sufficient to allege the bringing into court the deed of release.

9 Geo. 2. c. 5.
s. 6. Ir.

*Recital of lease
for a year in
release evidence.*

1 Geo. 3. c. 3.
s. 2. Ir.

*Profert of re-
lease sufficient.*

§ 6.

*Mode of ac-
knowledging and
inrolling sta-
tutes-merchant.*

13 Edw. 1. st. 3.
E. & I.

VI. As to *Recognizances*: it is enacted by the statute *de mercatoribus*, 13 Edw. 1. st. 3. E. & I. that a merchant which will be sure of his debt shall cause his debtor to come before the mayor of London, or before some chief warden of the city or other town where the king shall appoint, and before the mayor or chief warden, or other discreet men sworn thereto, when the mayor or chief warden cannot attend, and before one of the clerks that the king shall assign, when both cannot attend, and acknowledge the debt and day of payment; and the recognizance shall be inrolled by one of the clerks, and the roll shall be double, whereof one part shall remain with the mayor or chief warden, and the other with the clerks; and one of the clerks shall write an obligation, whereunto the seal of the debtor shall be put with the king's seal, which seal shall be of 2 pieces, whereof the great piece shall remain with the mayor or chief warden, and the other in the keeping of the clerks. And there shall be also another seal provided that shall serve for fairs, and the same shall be sent unto every fair under the king's seal by a clerk sworn, or by the keeper of the fair. And of the commonalty of London 2 merchants shall be chosen, that shall be

be sworn, and the seal shall be opened before them, and one piece shall be delivered to the merchants, and the other shall remain with the clerk; and before them, or one of the merchants, if both cannot attend, the recognizances shall be taken. And before the recognizances be inrolled, the pain of the statute shall be read before the debtor. And to maintain the costs of the clerk, the king shall take of every pound a penny, in every town where the seal is, except fairs, where he shall take one penny halfpenny of the pound. And this act shall be observed throughout England and Ireland between any that will make such recognizances, except Jews. And by the 14

Edw. 3. st. 1. c. 11. E. & I. every clerk deputed to re-

14 Edw. 3.
st. 1. c. 11.
E. & I.

ceive recognizances in cities and boroughs, shall abide in person to do his office, and shall have lands sufficient in the county, whereof he may answer. With respect to

Clerk to be sufficient and resident.

statutes-staple, by the 27 Edw. 3. st. 2. c. 9. E. & I. every mayor of the staples shall have power to take recognizances of debts, in the presence of the constables of the staple, or one of them. And in every of the staples

27 Edw. 3.
st. 2. c. 9.
E. & I.

shall be a seal remaining in custody of the mayor, under the seals of the constables; and all obligations made upon such recognizances shall be sealed with the said seal, paying for every obligation of £100 and within, of every pound a halfpenny, and of every obligation above £100, a farthing. And with respect to recognizances in the nature of a statute staple: by the 23 Hen. 8. c. 6. Eng. the

Mode of acknowledging statutes-staple.

chief justice of the king's bench, and the chief justice of the common pleas, every of them by himself, and in their absence out of term, the mayor of the staple at

23 Hen. 8. c. 6.
Eng.

Westminster and the recorder of London together, shall have power to take recognizances for debts according to

Mode of acknowledging recognizances in the nature of a statute-staple.

this form: "Know all men by these presents us *A. B.* and *C. D.* to be held and firmly bound to *J. S.* in £——, to the same *J. S.* or his certain attorney shewing this writing, his heirs or executors, in (*such a feast, &c.*) next ensuing after the date of these presents; and if we fail in payment of the said debt, we will and grant that there shall then run upon us, our heirs, &c. the pain, in the statute of the staple for the recovering of debts for merchandize bought in the same, ordained and provided,

dated

- s. 3. dated (*such a day, &c.*) And by s. 3. every obligation made according to this act shall be sealed with the seal of the party, and also with such seal as the king shall appoint, with the seal of one of the said justices, or with the seals of the mayor and recorder, and with their names subscribed, that shall take the recognizance; and the justices, mayor, and recorder, shall have the custody of one such seal, which shall severally remain with them.
- s. 4. And by s. 4. such person as shall be assigned by the king shall write all such obligations, and cause the same to be inrolled in 2 rolls indented, whereof one shall remain with the justices, or with the mayor and recorder, that shall take the recognizance, and the other with the writer; and the person appointed for writing and inrolling such obligations, or his deputy, shall dwell in London, upon pain to forfeit for every time that he shall be absent 2 days, £10. By s. 5. the person assigned to write and inroll such obligations, at the request of the creditors, shall certify such obligations into chancery, under the seal of the said person. By s. 10. every of the said justices, and the said mayor and recorder, before whom such obligation shall be recognized, shall take for knowledge of such recognizance, 3s. 4d. and the clerk that shall inroll the same, 3s. 4d. and for the certificate of every such obligation, 20d.; and if any of the said justices, &c. take above the sums so limited, they shall forfeit 40s. And by s. 11. no mayor or constable of the staple, shall, for the payment of money, take any recognizance of the statute staple, upon pain to forfeit £40; the one moiety thereof to the king, and the other to the party that will sue for the same by action of debt, &c. in any of the king's courts: provided that this act be not hurtful to any mayor and constables of the staple, for any bond of statute staple taken between merchants being free of the staple, for merchandize of the staple between them bought and sold. By the 8 Geo. 1. c. 25. Eng. the rolls appointed by the 23 Hen. 8. c. 6. to be made of recognizances in the nature of a statute staple, shall be made in manner following, viz. the clerk of the recognizances, or his deputy, shall yearly prepare 3 parchment

parchment rolls, and shall, at the times of acknowledging every recognizance, ingross the full tenor of every such recognizance; and one of the rolls shall contain all the recognizances taken before the chief justice of the king's bench; and one other of them all the recognizances taken before the chief justice of the common pleas; and the other all the recognizances before the mayor of the staple and the recorder of London; and at the time of such acknowledgment the persons before whom such recognizances shall be taken, and also the party acknowledging, shall sign their names to the roll, as well as sign and seal the recognizance; and all the 3 rolls shall, at the end of every year, be fixed together and made one roll, and remain in the custody of the clerk of the recognizances, in his public office in London or Middlesex, who shall keep a docket to refer to the rolls; to which docket shall be added the day, month, and year of every acknowledgment. And by s. 2. in case any loss shall happen to any such recognizance, the same shall, from any of the rolls, be by the clerk, by certificate under his seal, certified into chancery; and to such certificate, and all certificates of such recognizances, shall be annexed a transcript of the entry from the rolls; and a like certificate, with such transcript annexed, shall be made and remain with the clerk of the petty bag; and shall be as effectual as if the recognizance under seal had been left in the office; and in case of loss, a copy from the rolls, signed by the clerk, and duly proved, shall be evidence of such recognizances. There is no statute in force in Ireland similar to the 23 Hen. 8. c. 6. or 3 Geo. 1. c. 5. By the 27 Eliz. c. 4. s. 7. Eng. the whole tenor of statutes-merchant and statutes-staple shall, within 6 months after the knowledging, be entered in the office of the clerk of the recognizances. [*according to the 23 Hen. 8. c. 6.] shewing the statute so knowledged unto the clerk; which clerk shall enter the same into a book, taking 8*d.* for such entry. And by s. 8. if the party to whom any such statute shall be knowledged, shall not within 4 months after the knowledging bring into the clerk or his deputy such statute, to the intent that the clerk may enter a copy thereof; every such statute

s. 2.

27 Eliz. c. 4. s. 7. Eng.

Statutes to be entered with clerk of recognizances.

* "in the court of chancery" in 10 Car. 1. st. 2. c. 3. Ir.

s. 8.

Otherwise void against purchasers.

- tute not so entered shall be void against all such persons, &c. as shall after the knowledging of the said statutes, purchase for money or other good consideration lands, &c. liable to the same statute, or any rent, lease, or profit, out of the same. By s. 9. if the said clerk shall not upon shewing and delivery unto him of any statute-merchant, &c. enter the same in his book within the said 6 months, and indorse upon such statute the day and year of his entry with his name; such clerk shall forfeit £20, one moiety to the crown, and the other to him that will sue for the same by action of debt, &c. in any court of record. And by s. 10. no clerk of the recognizances shall take for any search concerning any statute-merchant, or of the staple, above 2*d.* for one year's search; upon pain to forfeit to the party grieved twenty times as much as he shall take contrary to this act, to be recovered by action of debt, &c. in any court of record. The 10
- s. 9.
- s. 10.
- 10 Car. 1. st. 2. c. 3. s. 6. to 9. Ir. Car. 1. st. 2. c. 3. Ir. contains corresponding clauses. And with respect to recognizances in general, the Statute
- 29 Car. 2. c. 3. s. 18. Eng. 7 W. 3. c. 12. s. 14. 1*r.* of Frauds, 29 Car. 2. c. 3. Eng. provides, that the day of the month and year of the inrolment of recognizances shall be set down in the margin of the roll; and that no recognizance shall bind any lands, &c. in the hands of any purchaser *bona fide*, and for valuable consideration, but from the time of such inrolment. Which clause is also contained in the 7 W. 3. c. 12. Ir. And to prevent the loss of recognizances the 6 Geo. 1. c. 6. s. 7. Ir. requires that all recognizances taken in the courts of K. B. C. B. or Exc. and the original book wherein they are taken, shall, at the end of each term, be delivered up to the prothonotaries of the courts of K. B. and C. B. or to the chief remembrancer of the court of Exc. by the respective judges in each court, to remain there until they shall be vacated.
- Recognizances to bind lands from the time of inrolment.
- 6 Geo. 1. c. 6. s. 7. Ir.
- Safe keeping of recognizances.
- § 7. VII. For securing purchasers, preventing forgeries, and fraudulent gifts and conveyances of lands, the 6 Ann. c. 2. s. 1. Ir. provides that one public office for registering memorials of deeds, conveyances, wills and devises, shall be kept in the city of Dublin, to be managed and executed by a fit person, or his sufficient deputy, to be appointed by the crown, and to continue in said office so long
- Registry office established in Dublin.
- 6 Ann. c. 2. s. 1. Ir.

long as he shall faithfully demean himself therein. And by s. 3. a memorial of all deeds executed after the 25th March, 1708, and of wills and devises in writing where the devisor shall die after the 25th March, 1708, whereby any lands, &c. may be any ways affected, may, at the election of the parties, be registered in such manner as herein directed. By s. 6. every memorial shall be put into writing in vellum or parchment, and directed to the register of said office; and in case of deeds shall be under the hand and seal of some or one of the grantors, or grantees, or their guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the deed; which witness shall, by affidavit before the register, or his deputy, prove the signing and sealing of such memorial, and the execution of such deed, and the day and time of the delivery of such memorial to the register, &c.; and in case of wills, the memorial shall be under the hand and seal of some or one of the devisees, their guardians or trustees, attested by 2 witnesses, one whereof shall, by affidavit before the register, &c. prove the signing and sealing of such memorial; which respective affidavits he is hereby empowered to take, and required to file and enter in a book to be kept for the purpose. And by s. 7. every memorial of any deed, conveyance, or will, shall contain the day of the month, and year, when such deed or will bears date, and was perfected, and the names and additions of all the parties to such deed, and of the devisor of such will, and of all the witnesses to such deed or will;* and shall express the lands, &c. contained in such deed or will, and the names of all the counties, baronies, cities, towns corporate, parishes, townships, hamlets, villages, precincts, within this kingdom, where such lands are, that are given, granted, conveyed, devised, or any way affected or charged, by any deed or will, in such manner as the same are mentioned in such deed or will, or to the same effect: and every such deed, conveyance, or will, or probate of the same, of which such memorial is to be

s. 3.
After 25th March, 1708, deeds and wills may be registered.
s. 6.
Mode of registry.
s. 7.
Form of memorial.

VOL. I. 2 N registered,

* And by the 3 Geo. 1. c. 15. s. 1. Ir. the place of abode of the witness to the memorial who is not a witness to the deed, shall be inserted.

Form of certificate of registry.

Registry books, how kept.

Where more writings than one for perfecting any conveyance, how registered.

—s. 15.

s. 16.

25 Geo. 3. c. 47.
s. 3. Ir.

Where deed not executed in county or city of Dublin, before whom the affidavit of the execution of deed and memorial may be sworn.

registered, shall be produced to the register, &c. at the time of entering such memorial, who shall indorse a certificate on such deed, will, or probate, and therein mention the day and time, on which such memorial is so entered and registered, expressing also in what book, page, and number, the same is entered; and the said register, &c. shall sign said certificate: which certificate shall be evidence of such registries in all courts of record; and every page of such register books, and every memorial that shall be entered therein, shall be numbered, and the day of the month and year,* when such memorial is registered, shall be entered in the margins of said register-books, and of the said memorial; and such register shall keep an alphabetical calendar of all counties, baronies, cities, towns corporate, parishes, and townships, with reference to the number of every memorial that concerns the lands, &c. in such county, &c. and of the names of the parties mentioned in such memorial; and shall duly file every such memorial in order of time, and enter said memorials in the same order that they shall come to his hands.

By s. 15. where there are more writings than one for perfecting any conveyance or security, it shall be sufficient if all the said lands, &c. and the counties, &c. where the same lie, be only once named in the memorial, register, and certificate, of any of the deeds or writings; and that the dates of the rest of the deeds or writings, with the names and additions of the parties, and witnesses, and the places of their abode, be only set down in the memorials, registers, and certificates of the same, with a reference to the deed or writing whereof the memorial is so registered, and directions how to find the same.

And by s. 16. as amended by the 25 Geo. 3. c. 47. s. 3. Ir. where the lands contained in any deed, conveyance, or will, are not situate in the county or county of the city of Dublin, a memorial of such deed, &c. shall be entered or registered, in case an affidavit sworn before one of the judges at the assizes, or before the justices of the peace at the general quarter sessions of the county where such lands, &c. lie, or before a commissioner

* And hour or time of the day by the 3 Ann. c. 10. s. 2. Ir.

missioner for taking affidavits, (and for which 1s. 6d. shall be paid to the person taking such affidavit,) be brought with the said memorial to the said register, &c. wherein one of the witnesses to the execution of such deed or conveyance shall swear he saw the same executed, and the memorial signed and sealed, or wherein one of the witnesses to the memorial of any will shall swear he saw such memorial signed and sealed, as by the 6 Ann. c. 2. is directed. And by the 6 Ann. c. 2. s. 18. Ir. in case the devisee, or person interested in the lands, &c. devised by any will, by reason of the contesting such will, or other inevitable difficulty, without his wilful neglect or default, shall be disabled to exhibit a memorial for the registering thereof within the times herein limited ;* in such case the registry of the memorial within 6 months next after his attainment of such will, or probate thereof, or removal of the impediment whereby he is hindered to exhibit such memorial, shall be a sufficient registry within the meaning of this act. By the 8 Ann. c. 10. s. 1. Ir. a memorial of all deeds and conveyances executed, (since the 25th March, 1708), or hereafter to be made, in Great Britain, and of all wills and devises in writing, (where the devisor hath died since the 25th March, 1708, or shall hereafter die,) whereby any lands, &c. in Ireland are or may be affected, shall be entered or registered in case an affidavit sworn before one of the judges at Westminster, or a master in chancery, or before the justices of peace in open court, at any general quarter sessions in Great Britain, be brought with the said memorial to the register, &c. appointed by virtue of the 6 Ann. in which affidavit one of the witnesses to the execution of such deeds shall swear he saw the same executed, and the memorial signed and sealed; or in which affidavit one of the witnesses to the memorial of any will shall swear he saw such memorial signed and sealed; and such affidavit shall be a sufficient authority to the register, &c. to give the party, that brings such memorial

2 N 2

and

* No time is herein limited for registering wills; but this clause is taken from the 2 Ann. c. 4. s. 21. Eng. which act by s. 20. provides that memorials of wills registered within 6 months after the death of the devisor dying within England, &c. or within 3 years after the death of every devisor dying upon or beyond the seas, shall be effectual.

6 Ann. c. 2.
s. 18. Ir.

Clause in respect to the time for registering wills.

8 Ann. c. 10.
s. 1. Ir.

Deeds and wills made in Great Britain affecting lands in Ireland how registered.

and affidavit, a certificate on the deed, or on a separate parchment, the deed not being produced, of the registering such memorial; which certificate, signed by the register, &c. shall be evidence of the registries of such

8 Geo. 1. c. 15. s. 1. Ir. And the 8 Geo. 1. c. 15. s. 1. Ir. provides, that where grantees in deeds or

Heirs, &c. of grantees or devisees may execute memorials.

conveyances (executed since the 25th March, 1708, or that shall hereafter be executed,) or devisees by any wills (as well in cases where the testator hath died since the 25th March, 1708, as where the testator shall die hereafter,) whereby any lands, &c. may be affected, have happened or shall happen to die before their having executed a memorial of such deeds, &c. it shall be lawful for the heirs, executors, administrators, or assigns, of such grantees or devisees, or for some or one of them, to sign and seal a memorial of such deeds, &c. and the same shall be as effectual as if such memorial had been signed and sealed by some or one of the immediate grantees or devisees named in such deeds, &c.

Satisfaction of mortgages how registered.

8 Ann. c. 10. s. 3. Ir.

By the 8 Ann. c. 10. s. 3. Ir. in case of mortgages whereof memorials have been or shall be entered in the register office pursuant to the 6 Ann. if a certificate shall be brought to the register, &c. signed and sealed by the mortgagee, his executors, administrators, or assigns, and attested by 2 or more witnesses, one of which witnesses shall by affidavit before the register, &c. or persons empowered by the 6 Ann. or this act to take affidavits, prove such monies to be satisfied and paid, and that he saw such certificate signed and sealed by the mortgagee, his executors, &c. then the register, &c. shall make an entry in the registry book against the registry of the memorial of every such mortgage, that such mortgage was discharged according to such certificate, to which the same entry shall refer, and shall after file such certificate and affidavit, to remain upon record in the said register office; for which entry the said register shall be allowed 6*d*. And by the 8 Geo. 1. c. 15. s. 3. Ir. (which recites this clause of the 8 Ann.) when the payment of the money cannot be so proved as thereby directed, if at any time afterward a certificate shall be brought to the register,

8 Geo. 1. c. 15. s. 3. Ir.

By whom and how the affidavit of payment may be made.

ter, &c. signed and sealed by the respective mortgagees, their executors, &c. respectively, attested by 3 witnesses at the least, to be named in such certificate with the places of their abodes, and occupations, importing that the money due by such mortgage, and the interest thereof, has been duly paid and satisfied to the mortgagee, his executors, &c. or to some person by his order, and such mortgagee, his executors, &c. making affidavit in writing at the foot, or on the back of such certificate, before said register, &c. or before some person empowered by the 6 Ann. or 8 Ann. to administer such oath, that he or they do not know of any other person concerned in interest in such mortgage, and one of the witnesses to such certificate, by affidavit before the register, &c. or before some of the persons empowered to administer such oath, proving that he saw such certificate duly signed and sealed by the mortgagee, his heirs, executors, administrators, or assigns, and saw such affidavit sworn by such mortgagee, his executors, &c. and upon the mortgagor, or his heirs, executors, &c. or their attorney or agent producing to the said register the original mortgage, so registered, cancelled, if the same be in being; and if the same be lost, or accidentally destroyed, then upon such mortgagor, his heirs, executors, &c. leaving with the register another certificate signed and sealed by the mortgagee, his heirs, executors, &c. that the said mortgage is lost or accidentally destroyed; (such certificate to be attested by 3 witnesses to be named in such certificate, with the places of their abodes and occupations; and one of the witnesses to such certificate, by affidavit to be made as aforesaid, proving that he saw such mortgagee, his heirs, executors, &c. duly sign and seal such certificate;) (for each of which affidavits so made before the register, 6*d.* and no more shall be taken;) then the register shall make an entry on the registry books against the registry of the memorial of such mortgage, as also at the foot or on the back of the memorial, that such mortgage was satisfied according to such certificate.

By

*Duty of register
in respect to
searches and
granting nega-
tive certificates.*

6 Ann. c. 2.

s. 10. Ir.

8 Geo. 1. c. 15.

s. 2. Ir.

25 Geo. 3. c. 47.

s. 2. Ir.

By the 6 Ann. c. 2. s. 10. Ir. the register shall make searches concerning all memorials that are required, and give certificates concerning the same under his hand. And by the 8 Geo. 1. c. 15. s. 2. Ir. as amended by the 25 Geo. 3. c. 47. s. 2. Ir. it shall be lawful for every person requiring a negative certificate to deliver unto, or lodge with the register, &c. at the register office, a note or memorandum, fairly written in parchment, and signed with his name, in the following words: "I desire to know
" what memorial or memorials are entered in your office,
" of any deeds, conveyances, or wills, made by (*naming*
" *the person or persons*) of or concerning, (*naming the*
" *manor, lands, tenements, or hereditaments,*) in the
" county of —, since the — day of —." And upon delivery of such note the register shall file the same, and shall, as soon as conveniently may be, give to the person requiring the same, a negative certificate to the following effect: "Upon diligent search made in the re-
" gister's office, from the — day of —, I do
" not find any memorial of any deed, conveyance, or
" will, made by (*naming the person,*) of or concerning
" (*mentioning the lands, tenements, or hereditaments,*) in
" the county of —, from the day aforesaid, until
" the date hereof, except the memorial hereinafter men-
" tioned. Witness my hand and seal this — day of
" —;" which certificate shall be attested by 2 or more witnesses, of which the person, or one of the persons, who brings such note, shall be one; and if such register, &c. shall be guilty of any fraud, collusion, or wilful neglect in making out such certificate, whereby any person shall be damnified, such person, his heirs, executors, or administrators, shall recover his damages against such officer, or his deputy, with full costs of suit. And by the 6 Ann. c. 2. s. 12. Ir. if such register, &c. shall neglect to perform his duty according to the directions of this act, or commit, or suffer to be committed, any undue or fraudulent practice in the execution of said office, and be thereof lawfully convicted, such register shall forfeit his office, and pay treble damages, with full costs of suit, to every person injured thereby, to be recovered by action of debt, &c. in any court of record at Dublin.

*Penalty for de-
fault.*

6 Ann. c. 2.

s. 12. Ir.

With

With respect to the effect of registry: By the 6 Ann. c. 2. s. 4. Ir. every deed or conveyance, a memorial whereof shall be duly registered according to this act, shall from the 25th March, 1708, be good and effectual, both in law and equity, according to the priority of time of registering such memorial, concerning the lands, &c. in such deed contained, according to the right, title, and interest of the person so conveying such lands, &c. against every other deed, conveyance, or disposition of the lands, &c. or any part thereof, contained in such memorial. And by s. 5. every deed or conveyance not registered, which shall be made and executed from the 25th March, 1708, of all or any of the lands, &c. contained in such deed, &c. a memorial whereof shall be registered in pursuance of this act, shall be deemed fraudulent and void, not only against a deed or conveyance registered as aforesaid, but likewise against every creditor by judgment, recognizance, statute-merchant, or of the staple, confessed, acknowledged, or entered into, from the 25th March aforesaid; as for and concerning all or any of the lands, &c. contained in such memorial registered as aforesaid. But it is provided (s. 14.) that this act shall not extend to any lease for years not exceeding 21 years, where the actual possession goeth along with said lease. The several statutes which respect the register counties in England, viz. 2 & 3 Ann. c. 4. 5 Ann. c. 18. 6 Ann. c. 35. 7 Ann. c. 20. and 8 Geo. 2. c. 6. do none of them contain any clause similar to the 6 Ann. c. 2. s. 4. *supra*, but they all provide that all deeds, and conveyances, as well as all judgments, statutes, and recognizances, (other than such as shall be entered into in the name and upon account of his majesty) whereby any lands in the respective counties may be affected, shall be adjudged fraudulent against any subsequent purchaser or mortgagee, plaintiff or cognisee, upon valuable consideration, unless such memorials thereof be registered before the registering of the memorial of the deed or conveyance, judgment, &c. under which such subsequent purchaser, &c. shall claim; and every devise by will shall be adjudged fraudulent and void against a subsequent purchaser

Effect of registry with respect to priority.

6 Ann. c. 2. s. 4.

s. 5.

Unregistered deeds fraudulent and void as against registered deeds, and creditors by judgment, &c.

s. 14.

Exception of certain leases.

Analogous provisions in the statutes respecting the register counties in England.

chaser or mortgagee, plaintiff or cognisee, upon valuable consideration, unless a memorial of such will be registered as directed by these respective acts. These English statutes are declared not to extend to copyhold estates, nor to leases at a rack rent, nor to any lease not exceeding 21 years where the actual possession goeth along with the lease: and the 7 Ann. c. 20. which respects the county of Middlesex, also excepts the chambers in serjeant's inn, the inns of court, and inns of chancery. As these statutes extend only to the counties of Yorkshire and Middlesex, I shall confine myself to this brief mention of them.

Certain deeds of bankers to be registered, and when.

33 Geo. 2.
c. 14. s. 2. Ir.

s. 3

All grants, &c. by bankers of their real estate, &c. to children void against creditors.

s. 6.

The 33 Geo. 2. c. 14. s. 2. Ir. provides for the security of the creditors of bankers, that all deeds and conveyances made by any banker, or any person by him empowered, whereby any part of his real estate, or leasehold interest, or any mortgage belonging to such banker upon any lands, &c. or leasehold estate, shall be granted, released, sold, mortgaged, demised, or incumbered or affected, (other than leases not exceeding 3 lives, or 31 years, to be made by such banker, at the full improved rent, without fine,) shall be duly registered in the office for the public registry of all deeds, within a calendar month after such execution thereof; and if such deed be executed out of this kingdom, then such deed shall be registered as aforesaid, within 3 calendar months from the time of such execution; and for want of such registry every such deed shall be fraudulent and void against every creditor of such banker, though made for valuable consideration. And by s. 3. all grants, sales, alienations, leases, or dispositions by any banker, during the time he continues a banker, of any part of his real estate, or of any leasehold interest to him belonging, or of any interest in such real estate, &c. to, or to the use of, or in trust for any son or grandson, daughter or granddaughter of such banker, shall be void against every creditor of such banker, though made for valuable consideration, and though such creditor was not a creditor at the time such grant, &c. was made. By s. 6. if any banker, after he shall stop payment, shall receive or discharge

charge any sum of money due to him at the time he shall stop payment, every such receipt and discharge shall be void. And all deeds and conveyances made by any

After Bankers stop payment, &c. their receipts or conveyances void.

banker of any real or personal estate to him belonging, after he shall abscond or conceal himself from his creditors, or stop payment, although the same shall be for valuable consideration, shall be void; unless made to the use of, or in trust for, all the creditors of such banker, according to the course in which the debts of such banker ought to be paid; or unless such deed shall be agreed to by all the creditors of such banker. And by s. 8. from the time

s. 8.

that any banker shall so abscond, &c. all the real estate, whether for lives, in fee-simple, or fee-tail, and all the personal estate, of which such banker shall be seised, possessed of, or entitled to, at the time of his death, or stopping payment, or absconding, or concealing himself from his creditors, shall be liable to the payment of all his debts, without regard to priority in point of payment,

And their estate and effects in such cases subject to debts without regard to priority.

Exception.

other than such debts as such banker shall have contracted before he became a banker; and other than such debts as shall be secured by deeds, &c. registered as aforesaid; which debts shall have the same priority as if this act had not been made. By s. 9. no banker who shall abscond

s. 9.

or conceal himself from his creditors, or who shall stop payment, shall have any privilege as a member of parliament, save only as to his person, in any suit in law or equity by his creditors. By s. 10. where any banker who shall stop payment, shall, within 3 calendar months after

Banker stopping payment, &c. shall have no privilege of parliament, save as to person.

s. 10.

such stopping payment, by any deed vest his whole real and personal estates, or so much thereof as shall be sufficient to pay all the debts that he shall owe at the time of the execution of such deed, and to defray all the expenses of executing the trusts of such deed, in one trustee, or more, for the payment of all the debts that were due at the time of the execution of such deed, such deed shall be valid; and the estates granted thereby shall stand vested in such trustee, &c. according to the estate and interest of such banker, discharged from his debts; such debts only excepted as are entitled to a preference by this act; and every purchaser of any part of such estate

When bankers stop payment, &c. effect of vesting their estates in trustees.

shall,

shall, upon payment of such purchase money to such trustee, have such estate so purchased, according to the estate and interest vested in such trustee, discharged from any claim of any creditor of such banker, except as aforesaid; and such purchaser shall not be obliged to see the application of such purchase-money made to the trusts provided for by such deed. And where the fund vested in such trustee shall be sufficient to pay all the debts of such banker, and to defray the expenses of executing such trust, it shall be lawful for such trustee, from time to time, to apply such sum as he shall receive as the purchase-money of such real or personal estates, first to debts entitled to a preference by this act, according to the order in which such debts ought to be paid, and in the next place to such of the other debts of such banker, as such trustee shall judge most for the advantage and speedy execution of such trust to pay first, without being obliged to apply such sum rateably or proportionably to all the debts of such banker. Provided (s. 11.) that in all such deeds the trustees therein named shall be approved by the majority in value of the creditors, or by the lord chancellor. And provided also (s. 12.) that such payments be made with the consent of the majority in value of the creditors, or with the approbation of the lord chancellor. And by s. 14. a majority in value of the creditors of such banker, may, if they shall have or apprehend that they have just cause, prefer a petition in the names of one or more of them, in behalf of themselves and the rest of the creditors, to the lord chancellor, setting forth the misbehaviour, delays, neglects, or omissions of such trustees, (which petition such trustee, and such banker, and all others whom the same shall concern, shall be obliged in due time to answer upon oath;) and the lord chancellor, if it shall appear to him that such petition was preferred by order of the majority in value of such creditors, shall hear and determine such petition summarily, and appoint one or more new trustees, and revoke the powers of the old trustees, and make such orders therein for the due execution of such trusts as shall be just, and enforce obedience to such order by the

s. 11.

*Trustees by
whom approved
of;*

s. 12.

*And payment by
Trustees.*

s. 14.

*Jurisdiction of
chancery in res-
pect to such
trustees*

the usual process of that court; and if it shall become a question at any time, whether such petition were preferred by the order of a majority in value of the creditors, the lord chancellor shall enquire into and determine that fact, and compel the banker and his trustee to answer upon oath to all particulars that may discover that fact.

By s. 15. no person who by reason of any office, employment, deputation, or clerkship, shall be entrusted with the receipt, custody, or payment of public money, shall, either singly or in partnership, so long as such person shall continue in such office, &c. follow the business of a banker; or by himself, or by any person authorized by him, issue or give any note or accountable receipt as a

Who excluded from being bankers, or acting as such.
s. 15.

banker, or for profit discount any promissory note, or bill of exchange, upon pain of forfeiting £20 for every such note or receipt issued or given by such person; and the like sum of £20 for every note or bill discounted by him as aforesaid; to be recovered by civil bill by him that will first sue for the same. And by s. 4. no banker

Penalty.

s. 4.

shall issue or give any note, negotiable receipt, or accountable receipt, with any promise or engagement therein contained for the payment of any interest; and all notes and receipts that shall be given by any banker with such promise, &c. shall be void. But by s. 5. if

Bankers not to issue notes, &c. payable with interest.

s. 5.

any banker shall not pay any note, negotiable receipt, or accountable receipt, issued or given by him, or by any person by him for that purpose appointed, upon demand, when the same shall become due, every such banker that shall so make default in payment, his heirs, executors, and administrators, shall be obliged to pay not only the sum in such note, &c. contained, but also legal interest for the same from the time of such demand, until the time of paying the same, unless some agreement to the contrary shall have been made between such banker and such creditor. In order that persons interested in such banks, or their representatives or creditors, may not be delayed in settling their accounts, and in making payments to the creditors of such banks, it is provided (s. 16.) that every creditor by accountable receipt, or promissory note, of any bank, shall in 3 years

But their notes, &c. not paid on demand liable to interest.

s. 16.

after

*Payment to be
demanded within
5 years after
bankers quit
business, or stop
payment, or
barred.*

after the time that such bank shall quit business, or stop payment, make a legal demand of what shall be then so due to such creditor; and on failure of making such demand, such creditor shall be barred from suing for such note or receipt in law or equity; and the defendant against whom any suit shall be brought after the time aforesaid, may plead payment and give this act in evidence. This act is peculiar to Ireland.

*Anonymous
Partnerships
may be for 14
years.*

*21 & 22 Geo. 3.
s. 1. c. 46. Ir.*

The anonymous partnership act, 21 & 22 Geo. 3. c. 46. Ir. may be also referred to this place. By this

statute any number of persons may by deed or instrument of partnership, under their hands and seals, executed in the presence of 2 or more subscribing witnesses, enter into a joint trade or co-partnership for the purpose of buying and selling in the gross, or by wholesale, or for establishing or carrying on any manufacture or business, for any term not exceeding 14 years, but determinable at any shorter period, in such manner, and upon such conditions, as shall be agreed upon by such partnership deed; and the said co-partners, or some of them, shall thereby bind themselves to pay in money towards a joint stock, such sums as they shall respectively think fit, such joint stock however not to be, in any one of such companies or co-partnerships, less in the whole than £1000, or more than £50000. And by s. 2. such subscribers or co-partners may by such deed appoint from

*Amount of stock
required and li-
mited.*

s. 2.

*May appoint
acting partner,
and name of
firm.*

amongst themselves one person, or more, to conduct said trade, &c. in whose name or names whilst living and continuing in credit, with the addition of "and company" the business of said partnership shall be carried on; and such person, &c. shall be called the acting partner, &c. and his person, lands, goods and chattels, shall be as subject to the laws against bankrupts on account of said partnership debts, as if such acting partner had traded upon his own account, and without any connection in trade with the said other partners. By s. 3. the remain-

s. 3.

*Anonymous
partners.*

ing subscribers, &c. who shall not have the actual management of said trade, and whose names shall not be mentioned in the firm of said company, shall be stiled anonymous partners, and no debts or engagements of such anonymous partners shall charge or affect the other partners,

ners, or the said partnership stock, as debts due by the said company; nor shall such anonymous partners be subject to any contracts or engagements of any such acting partner, or to any loss which may happen in the said business, otherwise than as herein after mentioned.

And by s. 4. every such anonymous partner shall at the time of his execution of the articles or deed of co-part-

s. 4.

nership, pay to the acting partner of said company towards the capital stock thereof, a sum not less than

Anonymous partner to pay his subscription in manner herein limited.

1-4th part of the sum by him subscribed, and shall pay or tender in cash the remaining 3-4ths thereof to such acting partner, if living, at the end of 12 calendar months after the execution of said partnership-deed at furthest, or at such days and times within said 12 months, and in such proportions, as shall be limited by the said partnership deed or agreement, and that too without any demand by such acting partner; and in case any of the

Penalty for default.

said anonymous partners, his executors, or administrators, shall neglect or refuse so to pay or tender to the said acting partner the said 3-4ths, he shall forfeit for the benefit of the other partners and partnership creditors, the said 1-4th so paid by him, and all profits arising during the said partnership from said 1-4th, and shall no longer be considered as one of the co-partners; and, moreover, in case of a failure of the said partnership business, he, his heirs, executors, or administrators, shall be subject to pay the said partnership creditors any sum that may be wanting to satisfy their demands, not exceeding the said 3-4ths so originally agreed to be paid; but if at the end or other dissolution of the said partnership, the said trade shall have turned out so beneficial, that each of the said partners shall have received his principal money, with interest from the time of payment thereof, then the 1-4th so paid by such forfeiting partner, shall by the acting partner, his executors or administrators, be refunded to the said forfeiting partner, his executors, administrators, or assigns, but without any interest or profits. By s. 13. no

s. 13.

partnership shall be considered as formed under this act, unless every such partnership deed, or memorial thereof, shall, before the commencement of such partnership, or

Partnerships under this act to be registered.

within

within 10 days after the commencement thereof, be registered in the public registry office in Dublin for registering deeds, pursuant to the statutes, and in such manner as thereby and herein required, for which registry such fees shall be paid as such register is now entitled to receive for other deeds; and such register shall keep distinct books for the registry of such partnership deeds or articles, and distinct alphabets, and in all other respects do what is incumbent upon him to do with respect to the registry of the deeds of lands; and his certificate shall be evidence as in case of other registered deeds; and every memorial of such partnership deed shall contain the day and year when such deed bears date, and the names and additions of all the parties thereto, distinguishing which of them are the acting partners, and which of them anonymous, and the sums by them respectively subscribed, and the time from which such partnership is to commence, and the term for which it is to continue; and every such memorial shall be under the hands and seals of the acting partners, and attested by 2 witnesses, one whereof shall be witness to the execution of such deed, who shall, by affidavit to be made before the said register, or his deputy, prove the signing and sealing of said memorial, and the execution of said deed by all the parties thereto, or their lawful attornies, and the payment in cash, or good bank notes, of the said 1-4th of the subscription money to such acting partner by each of the other partners, and also the day and time of the delivery of such memorial to the register or his deputy.

s. 18.

*Bankers, &c.
not within this
act.*

By s. 18. no co-partnership for carrying on the business of bankers, or discounters of money for shop-keepers selling by retail, shall be considered as formed under this act.

*Accounts closed
once a year.*

s. 5.

By s. 5. a full account or rest in writing shall be made once in every year, or oftener, of all the effects belonging to said co-partnership, and of all debts owing by them, and a fair balance struck of the whole, and of each particular partner's share, and signed by the acting partner, and at least two-thirds of the anonymous partners,

ners, or their respective attornies for that purpose constituted, with the approbation of the said partners. And by s. 6. each of said anonymous partners, his executors or administrators, may take out of said partnership, after such fair settlement of accounts, and not before, half s. 6. and no more of his share of the net profits made by said company on the sums paid in by them respectively; and the residue of the profits, and any sum paid by a forfeiting partner, and the profits thereof, shall go to increase the said joint stock, until the expiration of the term of their co-partnership. But by s. 7. every such anonymous partner, having *bona fide* paid or tendered the full sum, in cash, by him subscribed, and specified in such partnership deed, at such times as before mentioned, and s. 7. who shall not act contrary to the true intent of this act, in any of the instances hereinafter expressed, shall not be subject to any of the laws against bankrupts, or to any greater loss, charges, or damages, on account of his having entered into such partnership, than the full sum so by him subscribed and paid, and such proportion of the profits as is so directed to be held over to the end of the partnership, at the utmost, or such proportion of the sum so subscribed, and of the profits not received, as may be necessary to make full payment of all the partnership debts and engagements; and in case a failure shall happen in such partnership business, or it shall be dissolved by the death of an acting partner, or on the terms of such partnership deed, before the time for the payment of the 3-4ths of the said subscriptions, then, each of such anonymous partners conforming to this act, his heirs, executors, or administrators, shall be bound only to pay such remaining 3-4ths, or such part thereof as may be necessary, with interest from the time limited by said partnership deed for the payment thereof, towards the discharge of such partnership debts, and shall not be subject to any further loss. By s. 8. no such partnership shall be dissolved by the death or bankruptcy of all or any of the anonymous partners during the term of said partnership, unless it shall be otherwise agreed by the said partnership deed; and the personal representative Half of net profits may be annually drawn out. of any anonymous partner, so dying, and the assignees of Anonymous partners how far liable. such s. 8. Effect of death or bankruptcy of anonymous partner.

Or of an acting partner.

s. 9.

Dissolution of partnerships to be advertized, &c.

s. 10.

Share of partner not to be sold without consent, &c.

s. 11:

such failing anonymous partner, or such person who shall on a public auction buy the share and interest of such deceased or failing anonymous partner, shall stand in the place of such deceased or failing partner during the term of said partnership, and be an anonymous partner on payment of such part of the deceased or failing partner's subscription, if any shall not have been paid; and in default of payment thereof, the sums before paid, though exceeding 1-4th of the sum subscribed by such deceased or failing partner, and the profits thereof, shall be forfeited in such manner as herein before mentioned as to the 1-4th of said subscription: and where there are 2 or more acting partners, the death or bankruptcy of any of them, during the term of the said partnership, whilst one shall survive in full credit, shall not dissolve the said partnership, unless it shall be otherwise agreed by said articles of partnership. Provided (s. 9.) that where there shall be one acting partner in full credit, such partnership shall be deemed to exist during the time specified by said partnership deed for its continuance, notwithstanding that by events specified in such deed it may be dissolved or dissolvable before the effluxion of such term for years, unless the dissolution shall have been twice advertized in the Dublin Gazette, and an entry made in the register's book opposite to, or immediately under the entry of the registry of such partnership, importing the dissolution of such partnership, and subscribed by some one or more of said partners, and truly dated, and for which entry the register shall receive 5s. By s. 10. none of the original partners, nor the purchaser of any share of a deceased or failing partner, shall, during the term of said partnership, sell or dispose of his share, unless upon such terms, and with such consents, as shall be specified in the said partnership deed, or with the consent of all the other partners; and even after such transfer, the original partner, unless he shall have previously paid or deposited with the acting partner his full subscription, shall stand bound by this act as if such transfer had not been made, until the partner accepted in his stead shall have fulfilled his engagement. By s. 11. every of said companies, may, as well before as after the determination of the said partnership,

partnership, sue and be sued during the life of the original acting partner or partners, and whilst such original acting partners shall remain in credit, by the firm, stile, and title, to be assumed pursuant to this act; and in case of the death or bankruptcy of a sole original acting partner, then in the name of the personal representative or assignees of such partner: and where there shall be 2 or more original acting partners, then, in case of the death or bankruptcy of one or more of them, in the names or name of the survivors or survivor, and in the name of the personal representative of such survivor of such original acting partners; but in case such acting partner or partners shall become bankrupt, then such suits shall be carried on for and against such partnership in the names of the assignees of such of the said acting partners as last became bankrupt; and in case any bill shall be filed in a court of equity against any such partnership by the firm aforesaid, it shall not be necessary to make all or any of the anonymous partners parties thereto: and no injunction shall issue, without special cause, for want of the answer of such anonymous partners, or any of them, if the acting partner shall have answered the bill, or obtained time so to do without an injunction. Provided (s. 12.) that in case the assignee of any such acting partner, shall not consider himself interested in any such suit, then the name of such assignee shall not be made use of by the other partners, or their representatives, without a sufficient indemnity given or tendered to such assignee against all costs, charges, and damages, which may attend such suit.

How such anonymous partnerships shall sue and be sued.

s. 12.

Name of assignee of acting partner not to be used without indemnity.

By s. 14. all contracts, debts, and engagements, subsisting at the time of the execution of the said partnership deed, between any anonymous partner and any acting partner, or as bail or security for each other, which shall not be fully disclosed, at or before the execution of the said partnership deed, to all the said partners, testified either by the said partnership deed, or some other writing signed by all the said partners, and attested by 2 or more witnesses; and also every kind of dealing between any anonymous partner, or any person in trust for

Secret contracts, &c. between anonymous and acting partners void.

s. 14.

s. 15.

*But contracts
between an
anonymous and
acting partner,
if approved by
majority, valid.*

him, and any such acting partner, or any person in trust for him, after the execution of said partnership deed, which shall not be approved by a majority of the said partners, by instruments under the hands, and attested as aforesaid, shall be void as between such acting partner and such anonymous partner. Provided (s. 15.) that if any dealings, after the execution of said partnership deed, between any anonymous partner and any acting partner, shall by a majority of said company be allowed as aforesaid, every debt and engagement of such anonymous partner shall be paid and performed to such acting partner, at such time, and in such manner, as the same ought to be paid, &c. by any other debtor to the said company, and with the like remedies for the recovery thereof, and without any pretence to withhold or postpone the payment of the same, for or on account of such anonymous partners share in the said capital stock, or the profits thereof. And by s. 16. if any anonymous

s. 16.

*Anonymous
partner evading
this act liable to
bankrupt laws.*

partner, or any person who by transfer shall be admitted to stand, or who by representation or bankruptcy shall stand, in the place of any anonymous partner, shall appear to the lord chancellor, either on an hearing upon affidavits in a summary way, or in such other manner as the chancellor shall direct, to have made any colourable or fictitious payment to the acting partner of any part of the sum subscribed by said partnership deed; or by any means, during the said partnership, knowingly to have gotten any greater proportion of the profits than is allowed to any such anonymous partner by this act; or to have done, or consented to the doing of, any thing to elude the provisions of this act, or to deceive or defraud any of the co-partners, or any creditor of said partnership, then, every person so offending shall be subject to the laws against bankrupts, as if such person were originally an acting partner in said company. And by

s. 17.

*Acting partners
how punishable
for default, &c.*

s. 17. any such acting partner who shall not, during such partnership, keep honestly and fairly a book in which shall be entered an account of all his dealings, bills of exchange drawn, indorsed, or accepted by him, and of his debts and credits, as well on account of said partnership,

nership, as on the foot of any private dealings, and of his expenses in house-keeping, and who shall not make out an inventory once in every year, during the said partnership, in such book, of all the partnership effects, and his private effects, save furniture and wearing apparel, and of the debts and credits on the foot of said partnership, and his private dealings, if any, specifying the profits and losses on the same; or who shall make use of any of the effects of said partnership, or make use of the firm or credit of such partnership to raise any money, or to contract any debt, save for the use and benefit of such partnership; or who shall wilfully refuse, neglect, or delay, to state and settle accounts with his co partners, and to hand over to them the balance, pursuant to this act, and to the deed of partnership, then it shall be lawful for every anonymous partner to deduct, and recover out of the capital stock, and the produce thereof, of such acting partner so offending, the sum of £20 for each £100 of such capital stock and the produce thereof of such acting partner, without prejudice to any remedy which such anonymous partner might have for such neglect or misconduct, if no such provision had been made by this act. This act is peculiar to Ireland.

By the 5 Geo. 2. c. 4. s. 10. Ir. no articles, deed, instrument, writing, or other security, entered into or perfected by any tradesman, or shop-keeper, whereby any part of the goods or effects in the hands or custody of such person, after the time of his death shall be charged with the payment of any sum of money, to, or in trust for, or for the use of, the widow, child or children of such person, shall bar any creditor of such shop-keeper, &c. from recovering his just debt out of the assets of such shop-keeper, &c. but such articles, &c. shall be void as to creditors; unless the same, or a memorial thereof, be entered and registered in the registry office appointed for registering deeds, wills, and conveyances, pursuant to certain acts of parliament, and in such manner as memorials of deeds, &c. are by said acts required to be registered, within 4 months after entering into or perfecting such articles, &c. This provision is peculiar to the law of Ireland.

Instruments by tradesman, &c. charging goods after his death for his widow or children, to be registered in 4 months.

5 Geo. 2. c. 4: s. 10. Ir.

CHAP. XIV.

Of Alienation by Matter of Record.

§ 1.

WITH respect to *Private Acts of Parliament*: the 41 Geo. 3. c. 105. I. & S. has been already stated, (*ante* page 145.) which authorizes the judges in Scotland and Ireland, to whom petitions for certain bills shall be referred, to examine witnesses upon oath touching the matter of such petitions.

§ 2.

*Petitions for
patents, what
to contain.*

1 Hen. 4. c. 6.
E. & I.

II. As to the *king's grants*: by the 1 Hen. 4. c. 6. E. & I. all which demand of the king lands, tenements, rents, offices, annuities, or other profits, shall make express mention in their petitions of the value of the thing so to be demanded, and also of that which they have had of the king's gift, or of his progenitors before; and in case they make not that mention, and that duly proved, the king's letters patent shall not be of any force.

18 Hen. 6. c. 1.
E. & I.

*Letters patent
to bear the date
of the king's
warrant.*

6 Hen. 8. c. 15.
Eng.

*Letters patent
to recite the te-
nor of former
patents thereby
revoked.*

27 Hen. 8.
c. 11. Eng.

And by the 18 Hen. 6. c. 1. E. & I. of every warrant sent by the king to the chancellor, the day of the delivery of the same to the chancellor, shall be entered of record in the chancery; and the chancellor shall cause patents to be made, bearing date the day of the said delivery, and not before; and if any patents be made to the contrary they shall be void. By the 6 Hen. 8. c. 15. Eng. if any person make suit to the king for any lands, offices, or other things, granted to any person during his pleasure, the first patentee being in life, he shall express in his petition or patent the tenor of the former patent, and that the king then hath determined his pleasure against the first patentee; or else the second letters patent shall be void. The 27 Hen. 8. c. 11. Eng. further provides, that every grant made in writing by the king, signed with his sign manual, to be passed under the great seal of Eng-
land

land or Ireland, or of the duchy of Lancaster, or of any of his counties palatine, or principality of Wales, or by process out of the exchequer, and all grants and writings which any officers shall make in the king's name, shall be, before the same be passed under any of the king's seals, or process made of the same, brought to the king's principal secretary, or one of the clerks of the signet, to be passed. And by s. 2. the clerk of the signet to whom the said writings shall be delivered, shall within 8 days, unless he have knowledge of the king's pleasure to the contrary, make letters of warrant subscribed with his hand, and sealed with the king's signet, to the lord privy seal; and one of the clerks of the privy seal, upon examination had by the lord privy seal of the warrant, shall within 8 days, unless the lord privy seal give commandment to the contrary, make other letters of like warranty, subscribed with the name of the clerk of the privy seal, to the lord chancellor of England, chancellor of Ireland, &c. for the writing and ensealing of letters patent or closed, or other process making, according to the tenor of the warrant from the privy seal. By s. 3. no person shall write any warrant upon any grant made by the king, or procure the same to be passed under the seals aforesaid, after other sort than as before specified; upon pain to forfeit £10; the one half to the king, and the other half to him that shall sue for the same, by action of debt, &c., in any of the king's courts. But by s. 5. this act shall not be prejudicial to the lord treasurer, concerning such warrants or precepts as he by virtue of his office may direct immediately to the lord chancellor or any other, for making out the king's grants of any offices or other thing belonging to his disposition: Nor by s. 11. to any persons whom the king shall by express command appoint to procure any thing to be sealed for his majesty's private affairs, or the affairs of the realm; so that the name of every such person be entered in the clerk of the hanaper's book after this sort, *per A. ad mandatum domini regis*: Nor by s. 12. shall this act be prejudicial to any person which shall have the grant or lease of any farm, the yearly rent whereof amounteth not above £6 13s. 4d. And this act (s. 8.) regulates the fees of the clerks of the king's

*King's grants
to be brought to
the Secretary,
&c.*

s. 2.

*Warrant by the
clerk of the
signet.*

s. 3.

s. 5.

s. 11.

s. 12.

s. 8.

s. 9. king's signet and privy seal. But by s. 9. the lord chancellor may use his discretion in passing any thing by the great seal, without fees for the great seal, signet or privy seal. The 37 Hen. 6. Ir. contains the same provision as the 18 Hen. 6. *supra*: But no statute has been passed in Ireland similar to the 6 Hen. 8. c. 15. or 27 Hen. 8. c. 11. The 14 & 15 Car. 2. c. 21. Ir. has increased the fee of the lord chancellor to 10s. upon every patent that shall pass the great seal of Ireland. By the act of settlement 17 & 18 Car. 2. c. 2. s. 234. Ir. the lord lieutenant and council shall settle and direct in the passing of all letters patent, how new and proper names more suitable to the English tongue, may be inserted with an *alias* for all towns, lands, and places in Ireland, which new names shall be only used. And it is one of the provisions of the Act of Union 40 Geo. 3. c. 38. Ir. and 40 Geo. 3. c. 67. Eng. that the great seal of Ireland may, if his majesty shall so think fit, after the union be used in like manner as before the union.

37 Hen. 6.
Ir.
*Patents in Ire-
land.*
14 & 15 Car. 2.
c. 21. Ir.
17 & 18 Car. 2.
c. 2. s. 234. Ir.
40 Geo. 3.
c. 38. Ir.
40 Geo. 3.
c. 67. Eng.

§ 3. III. The ancient mode of levying *finēs* is thus expressed by the 18 Edw. 1. st. 4. E. & I.: When the original is delivered in the presence of the parties before the justices, a serjeant shall say "Sir Justice leave to agree," the justice shall say "who will give?" "Sir, *R*," naming one of the parties. Then when they are agreed of the sum to be given to the king, the justice shall say "cry the peace." Then the serjeant shall say thus: "The peace is such, with your leave, that (*W. and A. his wife*) who here are, recognize the manor of *B.* with the appurtenances, contained in the writ, to be the right of *R.* as that which he hath of their gift; to have and to hold to him and to his heirs, of *W.* and *A.* and the heirs of *A.* as in demesnes, rents, seigniories, courts, pleas, reliefs, escheats, mills, advowsons of churches, and all other liberties and free customs to the aforesaid manor appertaining, rendering yearly to *N.* and his heirs, chief lords of the fee, the service due and accustomed, for all services." And the law will not suffer a final accord to be levied in the king's court without a writ original, and that at least before 4 justices in the bench, (or in Eyre;) and in presence of the parties, who must be of full age, of good

Mode of levying
finēs.
18 Edw. 1. st. 4.
E. & I.

good memory, and out of prison. And if a married woman be one of the parties, she must first be confessed of the 4 justices; and if she assent not to the fine it shall not be levied. By the 15 Edw. 2. st. 1. E. & I. parties to fines, as well demandant or plaintiff, as tenants or defendants, that will acknowledge their right of lands unto other in pleas of *warrantia chartæ*, covenant, or other, before the fines pass, shall appear personally, so that their age, idiocy, or other default, (if any be) may be discerned: provided that if any by age, impotence, or casualty, is not able to come in court, one of the justices shall go to the party and receive his cognizance, and shall take with him a knight or man of good fame. By the 2 Hen. 4. c. 8. E. & I. the chirographer, his farmer or deputy, shall not take more than 4s. for any fine; upon pain to lose his office, and be forejudged the court, and to have one year's imprisonment, and to pay the party grieved his treble damages; and the party grieved shall have his suit before the justices of the bench. By the 27 Edw. 1. st. 1. c. 1. E. & I. notes and fines levied in court shall be read openly, and in the mean time all pleas shall cease; and this must be 2 days in the week according to the discretion of the justices. And by the 1 Ric. 3. c. 7. E. & I. (and 4 Hen. 7. c. 24.) E. & I. after the ingrossing of every fine to be levied in the common place of any hereditaments, the same shall be openly read and proclaimed in court the same term, and in 3 terms next following the ingrossing, 4 days in every term, and at the same time all pleas shall cease. And a transcript of the fine shall be sent to the justices of assizes of the county where the tenements be, to cause the same to be proclaimed in every sessions of assizes the same year. And by s. 2. a like transcript shall be sent to the justices of peace, of the county where the lands be, and they shall cause proclamation of the fine to be made at 4 general sessions of the peace in the same year. And by s. 3. the said justices of assizes, and justices of peace, shall certify the proclamation to the justices of the common place, at the second day of the return of the term next following. But this act provides (s. 8.) that every fine

15 Edw. 2.
st. 1. E. & I.*Conusor to appear personally.**Commission to take fine in case of disability.*2 Hen. 4. c. 8.
E. & I.*Fees of chirographers.*27 Edw. 1.
st. 1. c. 1.
E. & I.*Fines shall be openly read;*4 Hen. 7. c. 24.
E. & I.
1 Ric. 3. c. 7.
E. & I.*And proclaimed.*

s. 2.

s. 3.

s. 8.

Fines at common law of same force as they were before.

1 Mar. st. 2.
c. 7. Eng.
10 Car. 1. st. 2.
c. 9. Ir.

31 Eliz. c. 2.
Eng.

Proclamations abridged.

15 Car. 1. c. 2.
Ir.

5 Hen. 4. c. 14.
E. & I.

Writs of covenant, &c. to be inrolled.

23 Eliz. c. 3.
Eng.

Effect of inrolment.

s. 7.

fine levied in any of the king's courts after the manner used before the making of this act, shall be of like effect as if this act had not been made. The 4 Hen. 7. c. 24.

E. & I. contained the same direction as to the number and times of the proclamations to be made in court.

And by the 1 Mar. st. 2. c. 7. Eng. all fines whereupon the proclamations shall not, by reason of adjournment of any term by writ, be duly made, shall be of as good force, as if the term had not been adjourned, and proclamations therein made: which is also provided by the

10 Car. 1. st. 2. c. 9. Ir. But by the 31 Eliz. c. 2. Eng.

all fines with proclamations to be levied in the common

pleas shall be proclaimed 4 times, once in the term

wherein ingrossed, and once in every of the 3 terms next

after; and every fine so proclaimed shall be of force, as

if the same had been 16 times proclaimed according to

the former statutes. And the 15 Car. 1. c. 2. Ir. has in

like manner reduced the number of proclamations re-

quired to be made. By the 5 Hen. 4. c. 14. E. & I. all

writs of covenant, and all other writs whereupon fines

shall be levied, with the writs of *dedimus potestatem*,

with all knowledges and notes of the same, before they

be drawn out of the common bench by the chirographer,

shall be inrolled of record, to remain in the custody of

the chief clerk of the common bench, for the old fee of

22*d.* for entering of the concord. And the 23 Eliz. c. 3.

Eng. also enacts, that every writ of covenant, and other

writ, whereupon any fine shall be levied, the return

thereof, the *dedimus potestatem*, the return thereof,

the concord, note, and foot of such fine, the pro-

clamations made thereupon, and the king's silver; (and

every writ of entry in the *post*, or other writ, where-

upon any common recovery shall be suffered, the writs

of *summon: ad warrantizandum*, the returns of the

same, and every warrant of attorney, as well of every

demandant and tenant, as vouchee,) may be inrolled at

the request of any person; and the inrolments of the

same shall be of as good force, as the same being extant

ought to be. And by s. 7. the chirographer of fines of

the common pleas shall write for every county, where her

majesty's

majesty's writ runneth, one table wherein shall be contained such contents of every fine that shall pass in any one term as hereafter mentioned, viz, the name of the county wherein the tenements be, the name of every plaintiff and deforciant, and of every manor named in the fine, and of the towns and places where the tenements lie; and, the first day of the next term after the ingrossing of every fine, shall fix the said tables upon some open place in the court of common pleas, and so every day of the term during the sitting of the court; and the chirographer shall deliver to every sheriff, written in parchment, a content of the table for that shire, in the term next before the assizes, or else between that term and the assizes. And every such sheriff, the first day of the next assizes, and every day during the assizes, shall fix the same in some open place in the court, where the justice of assize shall sit; upon pain that every chirographer, and sheriff offending, shall forfeit to the queen £5, and the other moiety to him that shall sue for the same, in any court of record. And the chirographer shall take for every such content, 4*d*. The 10 Car. 1. st. 2. c. 10. Ir. contains corresponding provisions: But the following clauses of the 23 Eliz. c. 3. Eng. have not been adopted by the Irish statute. By s. 5. every person that shall take the knowledge of any fine, (or warrant of attorney of any tenant or vouchee for suffering any common recovery,) or shall certify them, shall with the certificate of the concord, (or warrant of attorney,) certify also the day and year wherein the same was knowledged; and no person that taketh any such knowledge of any fine, (or warrant for any recovery,) shall be bound to certify any such knowledge, (or warrant,) except it be within one year after the knowledge taken. And no officer shall receive any writ of covenant, (or writ of entry,) whereupon any fine, (or common recovery,) is to pass, unless the day of the knowledge of the fine, (and warrant,) shall appear by such certificate; upon pain that every clerk that shall receive any such writ shall forfeit £5. And no attornment upon any fine shall be entered upon record, except the party mentioned to attorn

Fines to be posted in the common pleas, &c.

10 Car. 1. st. 2. c. 10. Ir.

23 Eliz. c. 3. s. 5. Eng.

first

s. 6.
Fees for inrol-
ment.

first have appeared in court in person, or by attorney warranted by the hand of one of the justices of the one bench or the other, or of one justice of assize, upon a writ of *quid juris clamat, quem redditum reddit, or per quæ servitia*; and every entry of attornment, where there shall be no appearance, shall be void. And by s. 6. there shall be one office for the inrolment aforesaid, which shall be called the office of inrolment of writs for fines, (and recoveries;) and the justices of the common pleas (other than the chief justice) shall have the care of the inrolment, and shall have the said office and the disposition thereof; and shall have the sums following, viz. for the inrolment and examination of every fine, 6s. 8d.; (for the inrolment of every recovery and the examination thereof; 6s. 8d.;) for every exemplification of the inrolment of any fine, 5s.; (for the exemplification and returns of every writ of entry, summons *ad warrantizand.* and warrants 5s.) for the search of the rolls of one year, 4d.; for the copy of one sheet containing 14 lines, 4d. And the said justices, or one of them, shall examine the inrolments of every fine, (and parts of recoveries,) and write his name in the roll thereof; upon pain that the said justice shall forfeit to the queen, £5. And it shall be lawful for the justices to take order in all things that shall be needful for the inrolments aforesaid; and upon examination in the court, to assess fine or amerciamment upon any clerk, sheriff, deputy, attorney, and other, for his negligence concerning the said fines, (and recoveries); the said fine and amerciamment to be estreated. And by s. 9. the records for the writing and making the rolls by the clerks of the justices, shall not be carried forth of the offices, otherwise than for the examination thereof by the justices.*

Effect of a fine.
18 Edw. 1. st. 4.
E. & I.

As to the force and effect of a fine. By the 18 Edw. 1. st. 4. E. & I. which prescribed the mode of levying fines, (*ante* page 566,) it was declared that the cause of such

* The 32 Geo. 2. c. 14. Eng. which regulates the payment of the pre-fines and post-fines, and the duties of the clerks and officers in the alienation office, is a statute which seems rather to concern the king's ancient revenue, *vide* page 188.

such solemnity is that a fine is so high a bar, that it fore-
 closeth not only parties and privies, and their heirs, but
 all other people who are of full age, out of prison, of
 good memory, and within the 4 seas, the day of the fine
 levied; if they put not their claim of their action within
 the year and day. By the 27 Edw. 1. st. 1. c. 1. E. & I.
 parties to fines and their heirs shall not be admitted to
 except, that before the fine levied, and at the levying
 thereof, and since, the demandants or their ancestors
 were always seised of the lands contained in the fine, or
 of some parcel thereof. By the 1 Ric. 3. c. 7. E. & I. 1 Ric. 3. c. 7.
s. 3, 4, 5, 6,
E. & I.
 and 4 Hen. 7. c. 24. E. & I. every fine, after the ingross-
 ing, reading, and proclaiming, (as above mentioned) shall 4 Hen. 7. c. 24.
E. & I.
 be final, and conclude as well privies as strangers, except
 women covert, (other than parties,) and every person then
 within age of 21 years, in prison, or out of this realm,
 or not of whole memory at the time of such fine levied;
 saving to every person and to their heirs, other than par-
 ties, such right as they have at the time of such fine in-
 grossed; so that they pursue their claim, by action or
 entry, within 5 years after the proclamations; and saving
 to all other persons such right as shall come to them, af- Plea of non-
claim a bar after
5 years.
 ter the fine ingrossed and proclamation made, by force of
 any gift in tail, or other cause had, before the fine le-
 vied; so that they take their right according to law within
 5 years after such right accrued. And the said persons,
 and their heirs, may have their action against the taker of
 the profits at the time of the action taken. And if such
 persons at the time of such right accrued be *covert de*
baron, within age, in prison, out of this land, or not of
 whole memory, their right shall be saved to them and to
 their heirs unto the time they be at full age, out of prison,
 within this land, unmarried, and of whole memory; so
 that they or their heirs take their actions or entry within
 5 years after that they be at their full age, &c. and pur-
 sue the same with effect. And all such persons as be *co-*
vert, not parties to the fine, and every person being
 within the age of 21, in prison, out of this land, or not
 of whole memory at the time of the fines levied and in-
 grossed, having any title, and their heirs, shall take their
 actions or entry within 5 years after they be of full age,
 &c.

4 Ann. c. 16.
s. 15. Eng.
6 Ann. c. 10.
s. 16. Ir.

No entry sufficient to avoid a fine unless action thereupon within a year.

32 Hen. 8.
c. 36. Eng.

Fine by tenant in tail bars issue.

s. 2.

Exceptions.

s. 3.

s. 4.

10 Car. 1. st. 2.
c. 8. Ir.

&c. or they or their heirs shall be concluded by the fines as they that be parties; saying to every person, not party nor privy, their exception to avoid the fine, that those which were parties to the fine, nor any of them, nor any person to their use, had any thing in the lands, &c. comprised in the fine, at the time of the fine levied. But by the 4 Ann. c. 16. s. 15. Eng. no claim or entry shall be of force to avoid any fine levied with proclamations in the common pleas, (or in the courts of sessions in the counties palatine, or of grand sessions in Wales) or shall be a sufficient entry or claim within the statute of limitations, (21 Jac. 1. c. 16.) unless upon such entry or claim an action be commenced within one year after making such entry, &c. and prosecuted with effect. And the 6 Ann. c. 10. Ir. contains the same provision. By the 32 Hen. 8. c. 36. Eng. all fines levied before the justices with proclamations according to the statute (viz. 4 Hen. 7. c. 24.) by persons of full age, of lands before the fine levied entailed to the persons levying the fine, or to any ancestor of the same person, shall be, after the fine levied ingrossed and proclamation made, a bar against the persons, and their heirs, claiming the said lands by force of such entail, and against all other persons claiming the same to their use, or to the use of any heir of the bodies of them. Provided (s. 2.) that this act shall not bar any persons by reason of any fine levied, by any woman after the death of her husband, contrary to the statute, 11 Hen. 7. c. 20. (*ante* page 519,) of lands of the inheritance or purchase of the husband or his ancestors assigned to any such woman in dower, for term of life or in tail: Nor by s. 3. to any fine levied of lands, the owners whereof by any express words in any act of parliament, made since the 4 Hen. 7. c. 24. be restrained from making alienations. And by s. 4. this act shall not extend to any fine to be levied of any lands before the levying of such fine given to the persons levying of the same, or to their ancestors, in tail, by letters patent, or by act of parliament, the reversion whereof, at the time of the fine levied, shall be in the king. This statute has been followed without any deviation by the 10 Car. 1. st. 2. c. 8. Ir. By the 32 Hen.

32 Hen. 8. c. 28. s. 6. Eng. no fine, feoffment, or other act, by the husband only of any lands, &c. being the inheritance or freehold of his wife, during the coverture between them, shall make any discontinuance thereof, or be prejudicial to the wife or her heirs, or to such as shall have title to the same by the death of such wife; but such wife and her heirs, and others to whom such right shall appertain after her decease, may enter into such lands, &c. according to their rights and titles therein, notwithstanding any such fine, &c.; fines levied by the husband and wife, whereunto the said wife is party and privy, only except: provided (s. 7.) that this clause, or act, shall not extend to give any liberty to any wife, or to her heirs, to avoid any lease of the inheritance of the wife by the husband and her for 21 years, or under, or for 3 lives at the uttermost, whereupon as much yearly rent, or more, shall be reserved, as was at any time theretofore paid within 20 years next before making such lease, according to this act, (*ante* page 520.) But the 34 & 35 Hen. 8. c. 22. Eng. which recites this act, declares that all recoveries, deeds inrolled, and releases, taken and acknowledged before the mayors and other head officers in London, and other corporate towns, (which be of the nature of fines) shall be of like force as if said recited act had not been made. The 10 Car. 1. st. 3. c. 6. Ir. contains a clause (s. 4.) corresponding to the 32 Hen. 8. c. 26. s. 6. Eng. But the exception as to leases by the Irish act (s. 5.) is of those not exceeding 3 lives, or 41 years.

By the 32 Hen. 8. c. 7. s. 7. Eng. writs of covenant, and other writs for fines and other assurances of any parsonage, vicarage, portion, pension, or other profit, called ecclesiastical or spiritual, shall be granted in the chancery, as hath been used for lands, &c.: Which provision is also contained in the 33 Hen. 8. st. 1. c. 12. s. 4. Ir.

IV. With respect to the force and effect of *common recoveries*: the 34 & 35 Hen. 8. c. 20. Eng. declares, that no feigned recovery had by assent of parties against any tenant in tail of any lands, &c. whereof the reversion, or remainder, at the time of such recovery had, shall be in the king, shall bind or conclude the heirs in tail, whether any

The husband's fine, &c. of the wife's land shall not prejudice her, or her heirs.

s. 7.

Proviso.

34 & 35 Hen. 8. c. 22. Eng.

Exception as to corporate towns.

10 Car. 1. st. 3. c. 6. s. 4. & 5. Ir.

Fines may be levied of tithes, &c.

32 Hen. 8. c. 7. s. 7. Eng.
33 Hen. 8. st. 1. c. 12. s. 4. Ir.

§ 4.

No recovery shall bar the rights of the king.

34 & 35 Hen. 8. c. 20. s. 1. & 9. Eng.

any common voucher be had in such feigned recovery, or not; but after the death of such tenant in tail, the heirs in tail may enter according to the form of the gift of entail. By s. 3. the heirs of such tenant in tail, against whom such feigned recovery shall be had, shall take no advantage of any recompense in value against the voucher or his heirs. And by s. 4. this act shall not be prejudicial to the lessee of any tenant in tail, made by writing indented of any lands, &c. for 21 years, 3 lives, or under, whereupon the accustomable rent or more shall be reserved; but such lessee may enjoy his term against the heir of such tenant in tail, according to the 32 Hen. 8. c. 28. Eng. (*ante* page 520,) No statute has been passed in Ireland similar to the 34 & 35 Hen. 8. c. 20. Eng. By the 14 Eliz. c. 8. Eng. where persons are seised of lands, &c. as tenants by the curtesy, tenants in tail after possibility of issue extinct, or otherwise for term of life, or of estates determinable upon life or lives, all recoveries by agreement of parties, or by covin, against any such particular tenant, or against any other with voucher over of such particular tenant, shall, as against such persons to whom any reversion or remainder shall appertain, be void. But by s. 3. this act shall not be prejudicial to any person that shall by good title recover lands by reason of any former right. And by s. 4. all recoveries of land by assent of any person to whom the reversion or remainder thereof shall appertain, (so that the same assent appear of record in any court of the queen) shall be in like force against such persons that shall assent, as before this act. To which the 10 Car. I. st. 3. c. 11. Ir. is the corresponding statute in Ireland.

By the 14 Geo. 2. c. 20. Eng. all common recoveries in the court of common pleas, at Westminster, or in any other court having jurisdiction, of any lands, &c. the legal freehold estate of any part whereof shall be vested in any lessees for one or more lives, under particular rents reserved, shall without surrender of such leases, or without the concurrence of, or any conveyance from, such lessees, or other person claiming under such lessees, in order to make good tenants to the writs of entry, or other writs, shall be

s. 3.

s. 4.

14 Eliz. c. 8.
s. 1. & 2. Eng.*Recovery by tenant for life void.*

s. 3.

s. 4.

*Except by assent of him in reversion, &c.*10 Car. 1. st. 3.
c. 11. Ir.*Recoveries valid without surrender of freehold leases.*14 Geo. 2. c. 20.
Eng.

be as effectual as if such lessees had conveyed, or joined in conveying, a good estate of freehold to the tenants to such writs of entry, &c. But by s. 2. nothing in this act shall make any common recoveries valid unless the person entitled to the first estate for life, or other greater estate, (in case there be no such estate for life) in reversion, or remainder, next after the expiration [*of such leases], has by some lawful act conveyed, or joined in conveying, an estate for life to the tenants to the writs of entry, or other writs, whereupon such common recoveries shall be suffered. And by s. 3. nothing in this act shall prejudice the estate of such lessees, or any person claiming under such lessees. By s. 4. where any person shall purchase for a valuable consideration any estate in lands, &c. whereof a recovery is necessary to be suffered to complete the title, such person, and all claiming under him, having been in possession from the time of such purchase, may, after 20 years from such purchase, produce in evidence the deed making a tenant to the writ of entry, or other writ for suffering a common recovery, and declaring the uses of a recovery; and the deed so produced (the execution thereof being proved) shall be deemed good evidence for such purchaser, and those claiming under him, that such recovery was suffered according to such deed, in case no record can be found of such recovery, or the same shall appear not to be regularly entered on record; * provided the person making such deed, and declaring the uses, &c. had a sufficient estate and power to make a tenant to such writ, and to suffer such common recovery. And by s. 5. every common recovery shall, after 20 years from the suffering thereof, be deemed valid, [†if it appears upon the face of such recovery that there was a tenant to the writ; and] if the persons joining in such recovery had a sufficient estate and power to suffer the same, notwithstanding the deed making the tenant to the writ should be lost, or not appear.

And

* By the 21 Geo. 2. c. 11. s. 6. 1r. no deed shall be evidence of any recovery, unless such deed be acknowledged before one of the judges of the common pleas, and inrolled in said court within 6 months after the execution of such deed.

† This clause omitted in the 21 Geo. 2. c. 11. 1r.

s. 2.

* "or determination of the estate or interest of such lessees" in 21 Geo. 2. c. 11. 1r.

s. 3.

s. 4.

Evidence of recovery after 20 years.

s. 5.

Proof of deed making tenant to the præcipe dispensed with.

s. 6.

When the deed
making the te-
nant to the writ
may be executed.

And by s. 6. every recovery shall be valid, notwithstanding the fine, or deed making the tenant to such writ, should be levied or executed after the time of the judgment given in such recovery, and the award of the writ of seisin, provided the same appear to be levied or executed before the end of the term, [†great session, session, or assizes,] in which such recovery was suffered, and the persons joining in such recovery had a sufficient estate and power to suffer the same. [†But by s. 8. nothing in this act shall prejudice any question of law which may arise upon common recoveries not remedied by this act; but all such common recoveries shall be of such force as the same would have been if this act had never been

21 Geo. 2. c. 11.
Ir.

made.] The 21 Geo. 2. c. 11. Ir. has followed this statute with such deviations as are noted in the margin.

8 Geo. 1. c. 6.
s. 12. Ir.

And the 8 Geo. 1. c. 6. s. 12. Ir. had previously provided, that where any lease for life or lives should be made of any lands, &c. reserving rent, it should be lawful for the person to whom the reversion or remainder on such lease should belong, to grant such estate in reversion, &c. for life of such person as he should intend to make tenant to the *præcipe*; and thereupon a *præcipe* might be brought, and a common recovery suffered, which should bind and bar the tenant and vouchee in such recovery, and the persons in reversion and remainder, as if such lease had never been made.

Recoverers may
distrain, &c. as
those against
whom the reco-
veries are.

7 Hen. 8. c. 4.
Eng.

33 Hen. 8. st. 1.
c. 13. Ir.

By the 7 Hen. 8. c. 4. Eng. recoverers in recoveries, their heirs and assigns, may distrain for rents, services, and customs, and make avowry, or justify the same, as those against whom the recovery is had should have done, if the recovery had not been had; and also have *quare impedit* for any advowson of which disturbance be made; which remedies this statute recites they could not have had by the course of the common law. The 33 Hen. 8. st. 1. c. 13. Ir. is the corresponding Irish statute. And on the other hand to protect tenants against recoveries had upon feigned and untrue titles, by craft and cunning,

21 Hen. 8. c. 15.
Eng.

to put termors from their terms, the 21 Hen. 8. c. 15.

Eng

† These clauses within the crotchets omitted in the 21 Geo. 2. c. 11. Ir.

Eng. provides, that all termors may falsify, for their ^{*Termors may falsify recoveries.*} term only, such recoveries, as a tenant of the freehold might by the course of the common law, where such tenant was neither privy nor party to such recovery; and that such termors, their executors and assigns, notwithstanding such recoveries, shall hold their leases against such recoverers, their heirs and assigns, as if such recoveries had not been suffered; and such recoverers, their heirs and assigns, shall have like remedy against said termors, their executors and assigns, by avowry or action of debt, for the rents and services reserved upon such leases, and also like action against them for waste done after such recoveries, as the said lessors might have had if such recoveries had never been had. And by s. 2. no

s. 2,

statute of the staple, statute-merchant, nor execution by *elegit*, shall be avoided by any such feigned recovery; but all persons entitled to have execution of any lands, &c. by any such means, shall have like remedy to falsify such recoveries, as above provided for lessees for years. The 33 Hen. 8. st. 1. c. 11. Ir. is a transcript of this

33 Hen. 8. st. 1.
c. 11. Ir.

statute. By the 4 Ann. c. 16. s. 15. Eng. all declarations or creations of uses or trusts of any fines or recoveries, by any deed made, by the party who is enabled to declare such uses, &c. ^{*Declarations of trusts of fines and recoveries, though made after, good.*} after the levying or suffering of any such fines or recoveries, shall be as good and effectual in law, as if the statute of Frauds (29 Car. 2. c. 3.*) had not been made. The 6 Ann. c. 10. Ir. contains a similar provision.

4 Ann. c. 16.
s. 15. Eng.
6 Ann. c. 10.
s. 15. Ir.

* Vide page 537.

CHAP. XV.

Of Alienation by Special Custom.

*Feme coverts
and infants may
be admitted to
copyhold estates
by their attornies
or guardians.*

*9 Geo. 1. c. 29.
Eng.*

s. 2.

*Fines of admis-
sion how reco-
verable.*

BY the 9 Geo. 1. c. 29. Eng. where any person under the age of 21 years, or feme covert, shall be entitled, by descent, or surrender to the use of a last will, to be admitted tenant of any copyhold lands, &c. such infant or feme covert, in their proper persons, or such feme covert by her attorney, or such infant by his or her guardian, and in case he or she shall have no guardian, then by his or her attorney (for which purpose they are empowered by writing to appoint attornies) shall appear at one of the 3 next courts which shall be kept for such manor, whereof such tenements shall be parcel, and shall there tender themselves to be admitted tenants; and in default of such appearance, and of acceptance of such admittance, the lord or his steward, after 3 courts held, and proclamations made, may nominate at any subsequent court, any fit person to be guardian or attorney for such infant or feme covert, for that purpose only; and by such guardian or attorney may admit such infant or feme covert, and impose such fine as might have been imposed if such infant had been of full age, or such feme covert unmarried. And by s. 2. the fine set thereon may be demanded by the bailiff or agent of the lord, by a note signed by the lord or his steward, to be left with such infant or feme covert, or with the guardian of such infant, or husband of such feme covert, or with the tenant of the tenements to which they were admitted; and if the fine be not paid to the lord or his steward, within 3 months after demand, the lord may enter upon such copyhold

copyhold lands, &c. and hold the same, and receive the rents, (but without liberty to fell any timber) till by such rents he be paid the fine, with all reasonable costs and charges, although such infant or feme covert happen to die before such costs and fine be raised; of which rents received the lord shall yearly on demand render an account, and pay the surplus to such persons as shall be entitled. By s. 3. as soon as such fine and costs shall be satisfied, or if after such seizure and entry the fine and costs, &c. shall be tendered, then such infant or feme covert, or other person entitled, may enter and take possession; and if the lord, after the fine and costs, &c. satisfied, or tendered, shall refuse to deliver possession, he shall be liable to make satisfaction for all damages and costs.

s. 3.

And by s. 4. where any infant or feme covert shall be admitted to any copyhold lands, &c. if the guardian of such infant, or husband of such feme covert, shall pay the lord the fine and costs, then the guardian or the husband, their executors or administrators, may enter into and hold the said copyhold lands, &c. and receive the rents till they be satisfied all the money they shall disburse on the account aforesaid, notwithstanding the death of such infant or feme covert. By s. 5. no infant or feme covert shall forfeit any copyhold lands, &c. for neglect or refusal to come to any court, and be admitted; nor for the omission or refusal to pay any fine imposed on their admittance. And by s. 6. if the fine imposed in any of the cases before mentioned, shall not be warranted by the custom of the manor, such infant or feme covert shall be at liberty to controvert the legality of such fine, as if this act had not been made.

s. 4.

Guardians or husbands may reimburse themselves.

s. 5.

By the 5 Geo. 3. c. 46. s. 7. Eng. as amended by the 6 Geo. 3. c. 40. s. 3. & 4. Eng. if any steward or other officer of any copyhold court shall receive any fee for any surrender, admittance, grant, or lease, or any other copy of any court-roll, without demanding and receiving the stamp duty thereon, and delivering such surrender to the party entitled thereto as soon as the same can be prepared and made out after receiving the fee and stamp duty, he shall forfeit £10. And such steward, &c. shall

No forfeiture by infants, &c. for not paying fines, &c.

s. 6.

By the 5 Geo. 3. c. 46. s. 7. Eng. as amended by the 6 Geo. 3. c. 40. s. 3. & 4. Eng. if any steward or other officer of any copyhold court shall receive any fee for any surrender, admittance, grant, or lease, or any other copy of any court-roll, without demanding and receiving the stamp duty thereon, and delivering such surrender to the party entitled thereto as soon as the same can be prepared and made out after receiving the fee and stamp duty, he shall forfeit £10. And such steward, &c. shall

5 Geo. 3. c. 46. s. 7. Eng.
6 Geo. 3. c. 40. s. 3. & 4. Eng.

Steward to receive stamp duty; and deliver surrender within a year.

deliver the copy of such surrender, &c. to the person entitled thereto, or to some person authorized by him to receive the same, (or if no person be so authorized, then to the bailiff of the manor for the use of such person,) within one year from the holding such court; and shall not incur the said forfeiture till after one year from the holding such court.

Common recoveries may be suffered in copyhold courts by attorney

47 Geo. 3.
st. 2. c. 8.
U. K.

By the 47 Geo. 3. st. 2. c. 8. U. K. it shall be lawful for every person not being under coverture, and for every feme covert, (such feme covert being solely and secretly examined by the lord of the manor whereof the copyhold or customary tenements, a common recovery of which is proposed to be suffered, shall be holden, or by his steward, or by the deputy of such steward) to appoint any person to be his or her attorney for the purpose of surrendering such copyhold or customary tenements, to the use of any person to make him tenant to the plaint; and also to appoint any other person to appear for the person so appointing, as vouchee, and to enter into the usual warranty; and to do all other necessary acts for the suffering such recovery; and to direct the demandant to such recovery to surrender the tenements so recovered, when such recovery shall be perfected, to such uses as shall be declared in the instrument by which such attorney shall be appointed; and the surrender and recovery so had and suffered shall be of the like effect, as if the party had appeared in court in person to acknowledge such surrender, &c. and had joined in the surrender to be made by such demandant.

CHAP.

CHAP. XVI.

Of Alienation by Devise.

BY the 32 Hen. 8. c. 1. s. 1. & 2. Eng. as explained *Estates in fee simple may be devised, except to corporations, or by persons under disabilities.* by the 34 & 35 Hen. 8. c. 5. s. 3, 4, & 14. Eng. any person being seised of an estate of inheritance, in fee simple, whether sole, in co-parcenary, or in common, or in possession, reversion, or remainder, in any lands, &c. 32 Hen. 8. c. 1. s. 1. & 2. Eng. held in socage, or of the nature of socage tenure, may give, will, dispose, and devise the whole thereof, or any rents or profits out of the same, or out of any parcel thereof, to any person (except bodies corporate,) by his last will and testament in writing, or by any act executed in his life time; saving to the king and other lords their reliefs and heriots, and other rights and duties. But it is provided that wills or testaments of any lands, &c. by any woman covert, or person within the age of 21, idiot, or person *de non sane* memory, shall not be good or effectual. These statutes contained also several provisions in respect to tenure by knight-service, which are rendered obsolete by the 12 Car. 2. c. 24. Eng. The 10 Car. 1. 10 Car. 1. st. 2. c. 2. Ir. st. 2. c. 2. Ir. has incorporated both these acts of Henry VIII. And it is a provision of the statute of frauds in each country. 29 Car. 2. c. 3. s. 5. & 6. Eng. and 7 W. 3. c. 12. s. 3. Ir. (29 Car. 2. c. 3. s. 5. & 6. Eng. and 7 W. 3. c. 12. s. 3. Ir.) that all devises and bequests of any lands or tenements devisable either by force of the statute of wills, or by this statute, or by the custom of any borough, or other particular custom, shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the devisor by three or [*four] credible witnesses, or else they shall be utterly void. *Devises of lands to be in writing, and attested by 3 witnesses.* And no devise * "more" in 7 W. 3. c. 12. Ir. in writing of lands, &c. nor any clause thereof, shall be *How revocable,* revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same, by

by the testator himself, or in his presence, and by his directions and consent; but all devises, &c. shall remain in force until the same be burnt, &c. as aforesaid, or unless the same be altered by some other will, &c. signed in the presence of three or [*four] witnesses declaring the same. To remove the doubts as to who shall be deemed legal witnesses within the intent of this act, the

25 Geo. 2. c. 6.
s. 1. Eng.

*Devisee may be
a witness, but
devise to him
void.*

s. 2.

*Creditor also
competent.*

s. 6.

*Credit left to
court, &c. and
jury.*

s. 7.

*No person ex-
amined as a wit-
ness shall take
any benefit by
such will.*

25 Geo. 2.
c. 11. Ir.

*Penalty for
giving or accept-
ing payment.*

25 Geo. 2. c. 6. s. 1. Eng. enacts, that if any person shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate, (except charges on lands, &c. for payment of debts,) is thereby given or made, such devise, &c. shall, so far only as concerns such person attesting such will, &c. or any person claiming under him, be void; and such person shall be admitted as a witness to the execution of such will, &c. within the intent of said act. And by s. 2. in case by any will, &c. any lands, &c. shall be charged with any debts, and any creditor whose debt is so charged shall attest the execution of such will, &c. such creditor shall be admitted as a witness to the execution of such will, &c. By s. 6. the credit of every witness so attesting the execution of any will, &c. and all circumstances relating thereto, shall be subject to the consideration of the court and the jury, before whom such witness is examined, or his testimony or attestation made use of; or of the court of equity in which his testimony, &c. shall be made use of. And by s. 7. no person to whom any beneficial estate, interest, gift, or appointment, shall be given or made, which is hereby enacted to be void, and who shall have been examined as a witness concerning the execution of such will, &c. shall, after being so examined, demand or take possession of, or receive any profit or benefit from, any such estate, &c. The 25 Geo. 2. c. 11. Ir. contains clauses corresponding to those of the 25 Geo. 2. c. 6. Eng. above stated: And further provides, (s. 8.) that any person who shall give, or secure, or agree to pay, or shall accept any such legacy, or any satisfaction or security for the same, contrary to the true intent hereof, shall suffer imprisonment for 3 years; and such

such security or agreement shall be void. For the relief of creditors against the fraudulent devises of persons having by bonds or other specialties bound themselves and their heirs, the 3 W. & M. c. 14. Eng. provides, that all wills and testaments, limitations, dispositions or appointments, of or concerning any lands, &c. or any rent, profit, term, or charge out of the same, whereof any person, at the time of his decease, shall be seised in fee-simple, in possession, reversion, or remainder, or have power to dispose of the same by his last will, shall be deemed, as against such creditors, to be fraudulent and void, any pretence or feigned consideration notwithstanding. And by s. 3. in such cases every such creditor may maintain his action of debt upon such bond or specialty, against the heir at law of such obligor and such devisee jointly; and such devisee shall be liable for a false plea in the same manner as any heir would have been for any false plea, or for not confessing the lands or tenements to him descended. But by s. 4. where there shall be any limitation or appointment, devise or disposition, of any lands, &c. for the raising or payment of any just debt, or any portion for any child, other than the heir at law, in pursuance of any marriage contract, or agreement in writing *bona fide* made before such marriage, the same shall be in force, until such debt or portion shall be raised, paid, and satisfied. And this statute also protects creditors against the fraudulent alienations of the heir, as well as of the ancestor. For by s. 5. where any heir at law shall be liable to pay the debt of his ancestor in regard of any lands, &c. descending to him, and shall alien the same before any action brought, such heir shall be answerable for such debt, in an action of debt, to the value of the land by him aliened; in which cases all creditors shall be preferred as in actions against executors, &c. and such execution shall be taken out upon any judgment so obtained against such heir, to the value of said land, as if the same were his own debt; saving that the lands *bona fide* aliened before action brought shall not be liable to such execution. And by s. 6. where any action of debt upon any specialty is brought

3 W. & M.
c. 14. s. 1 & 2.
Eng.

Wills fraudulent against creditors.

s. 3.

Specialty debts suable against heir and devisee jointly.

s. 4.

Certain devises good against creditors.

s. 5.

Heir aliening before action liable.

s. 6.

Proceeding
where *riens per*
descent
pleaded, or
judgment by
confession, &c.

s. 7.

Devisee charge-
able as heir.

4 Ann. c. 5.
Ir.

brought against any heir, he may plead *riens per descent* at the time of the original writ brought, or the bill filed against him; and the plaintiff may reply that he had lands, &c. from his ancestor before the original writ brought, or the bill filed; and if upon issue joined it be found for the plaintiff, the jury shall inquire of the value of the lands, &c. so descended, and thereupon judgment shall be given, and execution awarded; but if judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damages, without any writ to inquire of the lands, &c. descended. And by s. 7. every devisee made liable by this act, shall be chargeable in the same manner as the heir at law, notwithstanding the lands devised shall be aliened before action brought. The 4 Ann. c. 5. Ir. is the corresponding statute in Ireland.

CHAP. XVII.

Of Title to Things Personal by Occupancy.

Copy-right of
authors for 14
years.

41 Geo. 3.
c. 107. U. K.

THE 41 Geo. 3. c. 107. U. K. may be referred to this head of *Occupancy*. By this statute the author of any book already composed, and not printed or published, and the author of any book which shall hereafter be composed, and the assignees of such authors respectively, shall have the sole liberty of printing and re-printing such books for the term of 14 years from the day of first publishing the same, and no longer; and if any bookseller, printer, or other person, in the united kingdom, or British dominions in Europe, shall print, re-print, or import, or cause to be printed, &c. any such book without the

the consent of the proprietor of such copy-right, first obtained in writing, signed in the presence of 2 or more witnesses, or, knowing the same to be so printed, &c. without such consent, shall sell, publish, or expose to sale, or cause to be sold, &c. or shall have in his possession for sale, any such book, without such consent, such offender shall be liable to a special action on the case at the suit of such proprietor; and such proprietor shall in such action, (to be brought in any court of record in that part of the united kingdom, or British dominions in Europe, in which the offence shall be committed) recover such damages, as the jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give, with double costs of suit; in which action no wager of law, &c. shall be allowed; and such offender shall forfeit also such book, and every sheet thereof, and shall deliver the same to such proprietor, upon the order of any court of record in which any action or suit, in law or equity, shall be commenced by such proprietor, to be made on motion or petition to said court; and such proprietor shall forthwith damask, or make waste paper of, such book and sheets; and such offender shall also forfeit 3*d.* for every sheet found in his custody, either printed or printing, or published or exposed to sale, contrary to this act, one moiety to the king, and the other to any person that will sue for the same, in any such court of record by action of debt, &c.: Provided that after the said 14 years, the right of printing or disposing of copies shall return to the authors, if then living, for another term of 14 years.

By s. 2. nothing in this act shall extend to any book heretofore composed, and printed or published in any part of the united kingdom; nor to indemnify any person against any penalties or actions, to which he may be liable by the laws in force at the time of passing the act for the union of Great Britain and Ireland. By s. 3, the college of Dublin * shall at their own printing press within said college, have, for ever, the sole liberty of printing and

Special damages recoverable for any violation of this right.

And further penalties.

Authors shall have a 2d term of 14 years if living.

s. 2.

Not to extend to books already published, nor to indemnify against penalties under former laws.

s. 3.

Privilege of the college of Dublin.

* By the 15 Geo. 3. c. 53. Eng. the same privilege is granted to the 2 universities in England, the colleges within the same, the 4 universities in Scotland, and the colleges of Eton, Westminster, and Winchester.

and re-printing such books as shall have been, or (not having been heretofore published or assigned) shall be bequeathed, or otherwise given or assigned, by the authors or their representatives, to or in trust for said college, (as a fund for the advancement of learning or other purposes of education) unless bequeathed, &c. for any limited term; and if any person shall unlawfully print, &c. such book, such offender shall be liable to the like action and penalties as offenders against the copy-rights of authors are by s. 1. *supra*: Provided that this act shall not grant any exclusive right to said college, otherwise than so long as said books or copies shall be printed at the press of said college; and if said college shall delegate, grant, lease, or sell such copy-rights, or any part thereof, or shall authorize any person, &c. to print or re-print the same, then the privilege hereby granted shall be void; but the college shall nevertheless have a right to sell such copies so bequeathed or given, as any author may do under this or any other act. Provided (s. 4.) that no

s. 4.

Booksellers, &c. not liable to the penalty of 3d. per sheet, unless copy-right registered at stationers hall.

person shall be liable to the penalty of 3*d.* per sheet as aforesaid, unless before the time of the publication of such book by the proprietor, (other than said college) the right of such proprietor shall be duly entered in the register book of the company of stationers in London, as heretofore done by the proprietors of copy-rights in Great Britain; nor if the consent of such proprietor for the printing, &c. such book, shall be in like manner entered; nor unless the title of said college to such copy-right as has been already bequeathed, &c. to said college, be entered in said register book before 29th September, 1801, and of such books as shall hereafter be bequeathed, &c. to such college, be entered in said register book within 2 months after such bequest, &c. shall have come to the knowledge of the provost of said college; for every of which entries 6*d.* shall be paid; which said register book shall be kept at the hall of said company, and may at all seasonable times be inspected by any bookseller, printer, or other person, for the purposes aforesaid, without any fee; and the clerk of said company shall, when required, give a certificate under his hand of such entry, and for such

Duty of clerk of the company of stationers.

such certificate take a fee not exceeding 6*d.*; and said clerk shall, without fee, within 15 days after the 31st December and 30th June in every year, make, for the use of the said college, a list of the titles of such books the copy-right to which shall have been so entered in the half year preceding said days respectively, and deliver said lists to any person duly authorized to receive the same on behalf of said college. Provided also (s. 5.) that if the clerk of said company shall refuse or neglect to register or make such entry, or to give such certificate, being thereunto required by the author, or proprietor of such copy-rights, or by the person to whom such consent shall be given, or by some person on his or their behalf, in the presence of 2 or more witnesses, then such party so refused, (notice being first given in the London Gazette) shall have the like benefit as if such entry or certificate had been duly made and given; and the clerk so refusing shall forfeit £20 to such author or proprietor, or to the person to whom such consent shall be given; or if such clerk shall refuse, &c. to make the list aforesaid, and to deliver the same to the person demanding the same on behalf of said college, such clerk shall forfeit to said college the like sum of £20; such penalties to be recovered by action of debt, &c. in any court of record in the united kingdom. And provided (s. 6.) that in addition to the 9 copies now required to be delivered to the warehouse-keeper of said company of stationers,* of each book which shall be entered in the said register book, one other copy shall be in like manner delivered for the use of the library of said college of Dublin, and also one for the library of the society of king's inns, Dublin,

s. 5.

How enforced.

s. 6.

Two additional copies of books entered at stationers hall shall be delivered there for Trinity College, and King's Inns, Dublin.

by

* By the 8 Ann. c. 19. s. 8. Eng. 9 copies on the best paper are to be delivered before publication for the royal library, the libraries of the universities of Oxford and Cambridge, of the 4 universities in Scotland, of Sion College in London, and of the advocates in Edinburgh; and the warehouse keeper of stationers hall is to deliver said books within 10 days after demand by the keepers of the respective libraries; and if any proprietor, bookseller, or printer, or the said warehouse keeper shall not observe the direction of this act therein, they shall forfeit the value of said copies, and £5 for every copy not delivered; the same to be recovered by the crown, by the chancellor, master, and scholars of the universities, and by the president and fellows of Sion College, and the said faculty of advocates, with their full costs.

*Penalty for im-
porting, &c.
any book first
composed, &c.
within the
united kingdom,
and re-printed
elsewhere.*

s. 7.

by the printer of every such book which shall be here-
after published, the title to the copy-right whereof shall
be entered in the said register book; and the said col-
lege and society shall have the like remedies for enforc-
ing the delivery of said copies, and all proprietors, book-
sellers, and printers, and the warehouse keeper of said
company, shall be liable to the like penalties for default
in delivering said copies for the use of said college, and
society, as are now in force with respect to the 9 copies
required to be delivered as aforesaid. By s. 7. it shall not
be lawful for any person to bring into the united king-
dom, for sale, any printed book first composed, written, or
printed and published, in the united kingdom, and re-
printed in any other country or place; and if any per-
son shall import or bring, or cause to be imported, &c.
for sale, any such printed book contrary to this act, or
shall knowingly sell, publish, expose to sale, or have in
his possession for sale, any such book, every such book
shall be forfeited, and may be seized by the officers of
customs or excise, and shall forthwith be made waste pa-
per; and every person so offending, shall forfeit £10,
and double the value of every copy of such book which
he shall so import, &c. contrary to this act; and the
commissioners of customs in England, Scotland, and
Ireland, respectively, (in case the same be seized by any
officer of customs) and the commissioners of Excise,
&c. (in case the same shall be seized by any officer
of excise) shall also reward the officer, who shall so
seize any such books, with such sum as said commis-
sioners shall think fit, not exceeding the value of such
books; such reward to be paid out of any money in their
hands arising from the duties of customs and excise:
Provided that no person shall be liable to any of the last
mentioned penalties or forfeitures, by reason of the im-
portation of any book, which has not been printed or re-
printed in the united kingdom, within 20 years next be-
fore the same shall be imported, or of any book re-
printed abroad, and inserted amongst other books or
tracts to be sold therewith in any collection, where the
greatest part of such collection shall have been first com-
posed or written abroad. By s. 8. if any action or suit
shall

s. 8.

shall be commenced in pursuance of this act, the defend-
 ant shall plead the general issue, &c. and shall recover
 the full costs of non-suit, discontinuance, or verdict; and
 all actions, suits, bills, indictments or informations, for
 any offence committed against this act, shall be com-
 menced within 6 months next after such offence.

By the 8 Geo. 2. c. 13. Eng. as amended by the 7
 Geo. 3. c. 38. Eng. and 17 Geo. 3. c. 57. Eng. every
 person who shall invent and design, engrave, etch, or
 work in *mezzotinto* or *chiaro oscuro*, or from his own
 work, design or invention, cause to be designed, &c. in
mezzotinto or *chiaro oscuro*, any historical print, or any
 print of any portrait, conversation, landscape, or archi-
 tecture, map, chart, or plan, or other print, shall have
 the sole right of printing and re-printing the same for
 28 years to commence from the first day of publishing
 thereof, which shall be engraved with the name of the
 proprietor on each plate; and all persons who shall en-
 grave, etch, or work in *mezzotinto* or *chiaro oscuro*, or
 cause to be engraved, &c. any print taken from any pic-
 ture, drawing, model, or sculpture, either ancient or
 modern, shall have the like benefit; and if any person
 shall within said time copy and sell, or cause to be co-
 pied, &c. in the whole or in part, by varying, adding to,
 or diminishing from the main design, or shall re-print or
 import for sale, any such prints, without consent of the
 proprietor in writing, signed in the presence of 2 wit-
 nesses, or, knowing the same to be so printed without con-
 sent, shall sell or expose to sale such prints without con-
 sent as aforesaid, such offender shall forfeit the plates,
 and all sheets so printed, to the proprietors of such ori-
 ginal prints, who shall forthwith destroy and damask the
 same; and every such offender shall forfeit 5s. for every
 print found in his custody contrary to this act; one moi-
 ety to the king, and the other to any person that shall sue
 for the same, in any court of record at Westminster, by
 action of debt, &c.; to be recovered with full costs: pro-
 vided such prosecution be commenced within 6 calen-
 dar months after the offence committed. And such pro-
 prietor may,* in a special action upon the case, recover
 such

Pleading.
Costs.
Limitation.

Property of
prints secured
to inventors and
engravers for
28 years.

8 Geo. 2. c. 13.
 Eng.
 7 Geo. 3. c. 38.
 Eng.
 17 Geo. 3. c. 57.
 Eng.

Penalty for in-
fringing this
right.

Special action
for injury.

* By the 17 Geo. 3. c. 57. Eng.

*Limitation.
Pleading.
Costs.*

such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give, together with double costs. But it shall be lawful for any person who shall purchase any plate for printing from the original proprietor, to print or re-print from said plate, without incurring any such penalty. And if any action be brought against any person for doing any thing in pursuance of this act, (7 Geo. 3. c. 38.) the same shall be brought within 6 calendar months after the fact committed: and the defendant may plead the general issue, &c. and if verdict be for defendant, or plaintiff become non-suit or discontinue, the defendant shall recover full costs. No act, whether before the union or since, has extended this privilege to the inventors of prints and engravings in Ireland.

CHAP. XVIII.

Of Title by Prerogative and Forfeiture.

THE statutes for preserving the game seem rather to respect the public police or economy, than the king's prerogative, and are therefore reserved for another place. And as to the statutes imposing forfeitures for various crimes and misdemeanors, and as compensations for offences and injuries committed, many of them have been already stated, and others will occur in the progress of this work.

*Justices of peace
empowered to
administer oaths
for levying pe-
nalties, &c.*

15 Geo. 3.
c. 39. Eng.

But the 15 Geo. 3. c. 39. Eng. may be here stated, which recites, that it is frequently necessary for justices of the peace to administer oaths or affirmations, where penalties are to be levied, or distresses made, in pursuance of acts of parliament, which they have no power to administer unless authorized so to do by such acts; and therefore enacts, that in all cases where any penalty is directed to be levied, or distress to be made by any act,

it

it shall be lawful for any justice or justices acting under the authority of such act, to administer an oath or affirmation for the purpose of levying such penalties, &c. And for better payment of fines and forfeitures imposed by justices out of sessions, in England, the 41 Geo. 3. ^{41 Geo. 3. c. 85. E.} provides, that it shall be lawful for every justice of peace acting out of session for any county, &c. in England, to receive all fines, forfeitures, and penalties, ^{*Justices to receive and account for fines, &c. imposed out of sessions.*} imposed by him or any other justice of peace acting out of sessions, (and not made payable to any body corporate, or any commissioners of any public boards, or other person,) and to give receipts for the same, which receipts shall be a sufficient discharge to the parties by whom said fines shall be payable; and every such justice shall, by himself or clerk, keep an account in a book of the amount of every such fine, &c. specifying the place, and time, and manner, of the adjudication or order, the nature of the offence, and the act under which the same was adjudged, and the name of the person on whom such fine, &c. was set or imposed; distinguishing whether the same was paid or levied, and what part thereof, if any, has been or shall be paid or payable to any body corporate, commissioners, or person, and the authority under which he or they claim such share; and shall annually, previous to the Michaelmas sessions, pay to every sheriff of every county, or city, or town and county, for which such justice shall have acted, all such fines, &c. as shall be due to the king; and the sheriff, or undersheriff, shall give an acquittance for the same, which shall be a discharge to such justice. And by s. 2. every justice shall, previous to the Michaelmas session, annually transmit to the clerk of the peace of the county, &c. or clerk of the town, within which such fine, &c. shall have been imposed, an account in writing, stating the several fines, &c. which have been imposed by him, and shewing what have been received by him, and for what offences; which account the clerk of the peace, or town clerk, shall enter in his estreats, with the names of the justices, that the sheriff may be charged with the same in his apposal before the foreign apposer, as in the case of fines, &c. ^{*Accounts of such fines to be transmitted to clerk of the peace, or town clerk.*} imposed

- s. 3. imposed at any session. And by s. 3. where 2 or more justices shall act together in imposing any fine, &c. the said account shall be kept, and a copy of it transmitted, and such payment as aforesaid made, by such one of said justices as shall reside at or near the place where such general quarter sessions shall be held. By s. 4. the said clerks of the peace or town clerks, or their deputies, shall, within 10 days after any general quarter sessions in which such justice shall have returned any conviction as aforesaid, deliver to the bailiff or chief constable of the district, where any person shall reside who shall be entitled to any proportion of any fines, &c. which shall have been received by any such justice, an account in writing of such fines, &c.; which bailiff, &c. shall transmit an account thereof to the petty constable of the parish, &c. where such person shall reside, that notice may be given to the person so entitled.
- Where 2 justices act, account kept by the one resident.
- s. 4. Constables to give notice to persons entitled to fines.
- s. 5. But by s. 5. nothing in this act shall prevent the officers of the crown from allowing any fines, &c. levied by justices of peace for justices' wages, as other fines are now allowed by law; and it shall be also lawful for sheriffs or other persons empowered to allow the same, to have an allowance of the same poundage on the balance of such fines charged on them, after an allowance for justices' wages, in like manner as for fines at the assizes. And by s. 6. nothing herein shall prevent the payment to the receiver of fines, &c. by the justices or their clerks, in any of the 7 public offices appointed by the 32 Geo. 3. c. 53. Eng. To these statutes there are none corresponding in Ireland.
- Provisoes.
- s. 6.

CHAP. XIX.

Of Title by Custom.

BY the 21 Hen. 8. c. 6. Eng. no parson, vicar, curate, *What mortuaries ought to be paid, and for what persons.* or spiritual person, nor their bailiffs or lessees, shall take for any person dying within the realm, any *mortuary* or *corse-present*, nor call any person before any judge spiritual for recovery of the same, otherwise than as hereafter *21 Hen. 8. c. 6. s. 1. & 2. Eng.* mentioned; upon pain to forfeit so much in value as they shall take above the sum limited, and 40s. to the party grieved; to be recovered in any of the king's courts by action of debt, &c. And by s. 3. no mortuary shall be taken of any person which at his death hath in moveable goods under the value of 10 marks: and no mortuary shall be demanded but in such place where mortuaries have been used to be paid: nor shall any person pay more than one mortuary: and no parson shall for any person dying, being at his death of the value in moveable goods of 10 marks above his debts, and under £30, take for a mortuary above 3s. 4d.; and for a person of the value of £30 and under £40, no more than 6s. 8d.; and for any person of the value of £40, or above, no more than 10s. By s. 4. for no woman being covert baron, nor child, nor for any person not keeping house, shall any mortuary be paid; nor for any wayfaring man, but the mortuary of such wayfaring persons shall be answerable in the places where they had their most habitation. By s. 5. it shall be lawful to all spiritual persons to take any money, or other thing, which shall be bequeathed unto them, or to the high altar of the church. But by s. 8. in places where mortuaries have been accustomed to be taken of less value than aforesaid, no person shall be compelled to pay more for any mortuary than

s. 3.

s. 4.

s. 5.

s. 8.

s. 6. hath been accustomed. This act also provided (s. 6.) that no mortuaries should be demanded in Wales or Berwick, but only in such parts of Wales, &c. where they had been accustomed to be taken; and in those places after the manner above specified. The 12 Ann. c. 6. Eng. 28 Geo. 2. c. 6. st. 2. c. 6. Eng. and 28 Geo. 2. c. 6. Eng. which abolished the mortuaries payable upon the death of clergymen in Wales, and in the archdeaconry of Chester, are of a local and peculiar nature. And the 17 & 18 Car. 2. c. 13. Ir. was of a temporary nature, which statute enabled the lord lieutenant and council of Ireland, with the assent of both houses of parliament, to abolish divers unreasonable forms of tithings and oblations, as mortuaries, berts, bornikestri *alias* barnikestrick, frividle, tenihanist or soul legacies, marygallons and portions of meal, flesh, candles, hides, tallow, apparel at burials and marriages, hogs of a year old, and the like; and to settle a table of tithes, oblations, mortuaries, and other church duties.

12 Ann. st. 2.
c. 6. Eng.
28 Geo. 2. c. 6.
Eng.

17 & 18 Car. 2.
c. 13. Ir.

*Mortuaries, &c.
abolished in
Ireland.*

CHAP. XX.

Of Title by Succession, Marriage, and Judgment.

*Mode of regis-
tering assign-
ments of judg-
ments prescribed.
9 Geo. 2. c. 5.
Ir.*

THE only statute which it seems can be conveniently referred to this chapter, is the 9 Geo. 2. c. 5. Ir. which recites that judgments, statutes-staple and statutes-merchant, are frequently assigned for valuable considerations, and to protect the purchase of estates, but are no more than equitable securities in the hands of the assignees; and therefore enacts, that where any conusee of a judgment, statute-staple, or statute-merchant, his executors, &c. shall assign the same, such conusee, his executors, &c. shall also perfect a memorial of such assignment under his hand and seal, upon parchment or vellum, attested by 2 or more witnesses; which memorial shall

shall contain the name and addition of the person so assigning, and the name of the person to whom the same shall be assigned, and the sum of money mentioned in such assignment to be remaining due upon such judgment, &c. with the day and year when such assignment was perfected; and one of the witnesses to such memorial, who shall be a witness to the assignment of such judgment, &c. shall make an affidavit, at the foot of such memorial, of the true perfection of such assignment, before the respective officer where such judgment, &c. shall be entered, or his legal deputy, or before any of the judges of the 4 courts in Dublin, or before any of the judges of his majesty's courts at Westminster; which memorial and affidavit shall be lodged in the proper office where such judgment, &c. shall be entered; and the several officers are required to enter such memorials in rolls of parchment or vellum to be kept in such respective offices; and to indorse on such assignments the day of the month and year, and hour of the day, whereon such memorials were so lodged and proved; and such officers shall enter the number and roll where such assignment is registered, at the foot of each judgment, &c. so assigned; for all which indorsements, entries, and affidavits, upon each memorial, 6s. 8d. shall be paid. And by s. 2. (as amended by the 25 Geo. 2. c. 14. s. 1. Ir.) from such time as such memorial of such assignment shall be entered on such roll, it shall be lawful for such assignee, his executors, administrators, or assigns, (and for no other person), in his or their own name or names, to revive such judgment, &c. and to sue forth execution thereon, reciting the special matter; or bring an action of debt, or otherwise proceed thereon; and also to discharge and release the same, and enter satisfaction on the record of such judgment, &c. as the conusee of such judgment, his executors or administrators, might do; and such assignee, &c. shall be considered to all intents and purposes in the place, stead, and condition, either in law or equity, of the assignor; and the conusor of such judgment, &c. his executors, administrators, or assigns, may, upon payment to such assignee, plead pay-
ment

*Assignees shall
revive, &c. as
conusees.*

s. 3.

*Conusors shall
have same de-
fence, &c.
against as-
signees as conu-
sees.*

ment, specially, to such assignee: and such assignee, his executors or administrators, may assign over the same in manner aforesaid, and such assignment shall be registered as aforesaid, and such assignee may revive, &c. as aforesaid. Provided (s. 3.) that the conusor of such judgment, &c. his heirs, executors or administrators, shall have the same remedy and defence both in law and equity against the assignee of such judgment, &c. or his representatives, as he or they might have had against the conusee, &c. These statutes are peculiar to Ireland.

CHAP. XXI.

Of Title by Gift, Grant, and Contract.

§ 1.

*Deeds of gift
to defraud cre-
ditors void.*

3 Hen. 7. c. 4.
E. & I.

* *Ante* p. 516.

§ 2.

*Contracts for
sales of goods
when valid.*

29 Car. 2. c. 3.
s. 17. Eng.
7 W. 3. c. 12.
s. 13. Ir.

BY the 3 Hen. 7. c. 4. E. & I. all deeds of *gifts* of goods or chattels (which this statute recites were often made with intent to defraud creditors) to be made of trust, to the use of the person that made the same, shall be void. And the 13 Eliz. c. 5. and 10 Car. 1. st. 2. c. 3. Ir. which have been already stated, * also avoided such fraudulent conveyances.

II. By the 29 Car. 2. c. 3. s. 17. Eng. no *contract* for the sale of any goods, wares, and merchandizes, for the price of £10 sterling, or upwards, shall be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized: The 7 W. 3. c. 12. Ir. contains the same provision.

*Sale of horses
how to be in
fairs, &c.*

2 & 3 Ph. & M.
c. 7. Eng.

To prevent the buying of stolen horses, the 2 & 3 Ph. & M. c. 7. Eng. enacts, that the owner, or chief keeper of every fair and market overt, shall, yearly, appoint a certain

certain place where horses, mares, geldings, and colts, shall be used to be sold, in which place there shall be, by the keeper of the fair, &c. appointed one or more to take toll, and keep the place, from 10 before noon until sun-set, upon pain to forfeit *40s.; [†and every toll-gatherer shall during such fairs, &c. take toll for every such horse, &c. at said place, between said hours, and not at any other place;] and shall have before him, [‡at the taking of the toll,] the parties to the bargain, exchange, gift, contract, or putting away of such horse, &c. and also the horse, &c. sold, &c.; and shall then write in a book the names, sur-names, and dwelling places, of all the parties, and the colour, with one special mark at the least, of every such horse, &c. on pain to forfeit *40s. And by s. 3. the [toll-gatherer or] keeper of the book shall, within one day after such fair, &c. deliver his book to the owner &c. of such fair, &c. who shall then cause a note to be made of the number of all horses, &c. sold at said fair, &c. and subscribe his name, or set his mark thereto; upon pain to forfeit *40s. [and also to answer the party grieved]. By s. 4. the sale, gift, or exchange, in any fair, &c. of any horse, &c. stolen, shall not alter the property, unless the same shall be in such fair, &c. openly ridden, led, walked, driven, or kept standing; for one hour, between 10 in the morning and sun-set, in the place wherein horses are used to be sold; and unless all the parties shall come together, and bring the horse, &c. to the open place appointed for the [toll-taker or] book-keeper, and there enter their names and dwelling places, with the colour, and one mark at least, of such horse, &c. in the [toll-takers book or] keepers book [where no toll is due]; [and also pay the toll, if they ought to pay any, and if not, then the buyer to give 1d. for each entry, &c.] [And by s. 5. if any horse, &c. that is stolen, be sold, given, exchanged, or put away in any fair, &c. not used according to this statute, the owner of such horse, &c. may seize said horse, &c. or have an action of detinue or replevin for the same. By s. 6. one half of said forfeitures shall be to the king, and the other to him that will sue for the same before the justices of peace, or in any court of record by action of debt,

*20s. by 4

Ann. c. 11. Ir.

† This clause

not in 4 Ann.

c. 11. Ir.

‡ "On the

bargain, &c.

in 4 Ann.

c. 11. Ir.

s. 3.

* 20s. by

4 Ann. c. 11.

s. 4.

s. 5.

s. 6.

s. 7. debt, &c. And by s. 7. the justices of peace shall have authority in their sessions to inquire, &c. of all offences against this statute. By s. 8. where toll is not due, the keeper of the book shall take but 1*d.* upon every contract, for writing the entry.] And by the 31 Eliz. c. 12. Eng. no person shall in any fair or market, sell, give, exchange, or put away, any horse, mare, gelding, colt or filly, unless the [toll-taker, or where no toll is paid] the book-keeper, [bailiff] or chief officer of such fair, &c. will take upon him knowledge of the person that shall offer to sell, &c. such horse, &c. and of his christian name, surname, and place of dwelling, and shall enter the same in a book kept for the sale of horses; or else that he so offering to sell, &c. shall bring to the officer as aforesaid, one credible person that will testify that he knoweth the party that so selleth, &c.; and enter in the book as well the name, mystery, and place of dwelling, of him that selleth, &c. as of him that shall so testify his knowledge of such person, and also enter the price that he shall have for the horse, &c.: [And no person shall avouch that he knoweth the party that shall so offer to sell, &c. such horse, &c. unless he do know such party, and shall truly declare to the toll-taker, &c. as well the name, &c. of himself, as of him for whom he maketh such avouchment]: And no [toll-taker or other] person keeping any book of entry of sales of horses shall [take any toll, or] make entry of any sale, &c. unless he knoweth the party that selleth, &c. or the party that shall avouch, &c. and shall make entry in the books of such his knowledge, and the true price that shall be had for such horse, &c. and then give to the party buying, &c. (requiring and paying *2*d.* for the same) a true note of the contents of the same, subscribed with his hand; on pain that every person that shall so sell, &c. any horse, &c. without being known to the toll-taker, &c. or without bringing such a voucher or witness, causing the same to be entered, and every person making any untrue avouchment, and every [toll-taker] book-keeper, or other officer offending in the premises, shall forfeit †£5; and every sale, &c. not according to the meaning aforesaid shall

* 3*d.* in 4 Ann.
c. 11. Ir.

† 20*s.* by
4 Ann. c. 11.
Ir.

shall be void ; the one half of † which forfeitures shall be to the queen, &c. and the other to him that will sue for the same before the justices of peace, or in any court of record by action of debt, &c. And by s. 3. the justices of peace shall have authority in their sessions † to inquire, &c. of all offences against this statute. [*By s. 4. if any horse, &c. shall be stolen, and after shall be sold in open fair, &c. and such sale shall be in all points as aforesaid, yet the sale of such horse, &c. shall not take away the property of the owner, so as claim be made, within 6 months, by the party from whom the same was stolen, or by his executors or administrators, at or in the town or parish where the same horse, &c. shall be found, before the mayor or other head officer, if such horse, &c. be found in a town corporate or market town, or before any justice of peace of the county near to the place where such horse, &c. shall be found, if it be out of a town corporate, &c. ; and so as proof be made, within 40 days then next ensuing, by 2 witnesses upon oath, before such head officer or justice, that the property in such horse, &c. was in the party by or from whom such claim is made, and was stolen from him within 6 months before such claim ; but the party from whom said horse, &c. was stolen, his executors, &c. may notwithstanding such sale, have said horse, &c. upon payment, or offer to pay, to the party that shall have the possession and interest of said horse, &c. if he will receive it, so much money as the party shall swear before such head officer or justice that he paid for the same, *bona fide*.) The 4 Ann. c. 11. Ir. has followed the 2 & 3 Ph. & M. c. 7. and 31 Eliz. c. 12. with such deviations as are noted in the margin.

* This clause (s. 4.) is not adopted by the 4 Ann. c. 11. Ir.

The 30 Geo. 2. c. 24. Eng. so far as the same related to the preventing the unlawful pawning of goods, and the

Redemption and sale of goods pawned.

† By the 4 Ann. c. 11. s. 2. & 3. Ir. the several penalties (which are each 20s) are to be recovered before the justices of assize, in the places where they shall sit, and where they do not sit, then before the justices of peace, at their sessions ; and to be one half to the poor, or for some public work, as the said judges of assize, or justices of peace, shall think fit, and the other moiety to the person that will sue before said judges or justices, as aforesaid.

. The words within the crotchets in the several parts of the 2 & 3 Ph. & M. c. 7. and 31 Eliz. c. 12. *supra*, are omitted in the 4 Ann. c. 11. Ir.

40 Geo. 3.
c. 99. Eng.

26 Geo. 3.
c. 43. Ir.
28 Geo. 3.
c. 49. Ir.

the easy redemption of goods pawned, was explained and amended by the 24 Geo. 3. c. 42. Eng. and several subsequent statutes, which have been superseded by the 40 Geo. 3. c. 99. Eng. This act contains several provisions for better regulating the business of pawn-brokers, defining the rates to be taken, in satisfaction of interest due, and charges for warehouse room, upon the redeeming any goods pawned or pledged; restraining the unlawfully pawning goods the property of others; and limiting the time and manner of purchasing, taking in pawn, or selling any goods in the course of this trade and business. And in Ireland the 26 Geo. 3. c. 43. Ir. as amended by the 28 Geo. 3. c. 49. Ir. contains also several provisions of a special nature, "for establishing the business of a pawn-broker on such a footing, and under such regulations, as would encourage persons of good repute and property to embark therein, as the means of earning a sufficient, honest, and proper livelihood, adequate to the risque, trouble, and necessary expenses, of carrying on the said business. All persons exercising the trade of a pawn-broker in Great Britain are required to take out a license annually by the 25 Geo. 3. c. 48. Eng. and a license is also made a qualification for exercising this trade by the 26 Geo. 3. c. 43. Ir. and 28 Geo. 3. c. 49. Ir. These several statutes are referable to the head of *bailment*, which is one species of contract by which a title to things personal may be acquired; but they are of too peculiar a nature to find a place in this work.

No assurances
to be made on
ships, &c. in-
terest or no
interest.

19 Geo. 2.
c. 37. Eng.

s. 2.

Exceptions.

s. 3.

By the 19 Geo. 2. c. 37. Eng. no assurance shall be made on any ship belonging to his majesty, or any of his subjects, or on any goods on board any such ship, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the assurer; and every such assurance shall be void. But by s. 2. assurances on private ships of war, fitted out by his majesty's subjects solely to cruise against his enemies, may be made by or for the owners, interest or no interest, free of average, and without benefit of salvage to the assurer. And by s. 3. any merchandizes or effects from any ports in Eu-
rope

rope or America, in the possession of the crowns of Spain or Portugal, may be assured as if this act had not been made. By s. 4. it shall not be lawful to make re-assurance, unless the assurer be insolvent, become a bankrupt, or die; in which cases such assurer, his executors, administrators, or assigns, may make a re-assurance, to the amount of the sum before by him assured; provided it be expressed in the policy to be a re-assurance. By s. 5. all money to be lent on bottomry, or at *respondentia*, upon any ship belonging to any of his majesty's subjects bound to or from the East Indies, shall be lent only on the ship, or on the effects on board such ship, and shall be so expressed in the condition of the bond; and the benefit of salvage shall be allowed to the lender, his agents or assigns, who alone shall have a right to make assurance on the money so lent; and no borrower on bottomry or at *respondentia* shall recover more on any assurance than the value of his interest on the ship, or in the effects on board, exclusive of the money so borrowed; and in case it appear that the value of his share in the ship or effects doth not amount to the sum he hath borrowed, he shall be responsible to the lender for so much thereof as he hath not laid out on the ship, or merchandizes laden thereon, with interest for the same, together with the assurance and all other charges thereon, in the proportion the money not laid out shall bear to the whole money lent, notwithstanding the ship and merchandizes be totally lost. By s. 6. in all actions brought by the assured upon any policy of assurance, the plaintiff, or his agent, shall, within 15 days after he is required so to do in writing by the defendant, or his agent, declare in writing what sum he hath assured in the whole, and what sum he hath borrowed at *respondentia* or bottomry, for the voyage, or any part of the voyage in question. And by s. 7. it shall be lawful for any person, &c. sued on any policy of assurance to bring into court any sum of money; and if the plaintiff refuse to accept such sum, with costs to be taxed, in discharge of such action, and afterwards proceed to trial, and the jury assess not damages exceeding the sum brought into court, such plaintiff

s. 4.

Re-assurance in what cases admitted.

s. 5.

Conditions for lending on bottomry upon ships bound to or from the East Indies.

s. 6.

In all actions plaintiff to declare within 15 days what sums he hath assured.

s. 7.

Defendant may bring money into court.

14 Geo. 3.
c. 48. Eng.

*No insurance on
lives, without
interest.*

s. 2.

*Names of per-
sons interested
to be inserted in
policies.*

s. 3.

*No greater sum
to be recovered
than the value
of the interest.*

s. 4.

28 Geo. 3.
c. 56. Eng.

*Policies of as-
surance upon
ships or goods
what to contain.*

*Grants of life
annuities to be
inrolled in chan-
cery.*

17 Geo. 3.
c. 26, s. 1. Eng.

plaintiff shall pay to such defendant costs to be taxed.

By the 14 Geo. 3. c. 48 Eng. no insurance shall be made on the life of any person, or on any other event, wherein

the person for whose use, or on whose account, such policy shall be made, shall have no interest, or by way of gaming or wagering; and every assurance made contrary hereto shall be void. And by s. 2. it shall not be lawful

to make any policy on the life of any person, or other event, without inserting in such policy the persons names interested therein, or for whose use such policy is made or under wrote. And by s. 3. where the insured

hath interest in such life, or event, no greater sum shall be recovered from the insurer, than the amount or value of the interest of the insured in such life, &c. But by

s. 4. nothing herein shall extend to insurances *bona fide* made by any person on ships, goods, or merchandizes.

And by the 28 Geo. 3. c. 56. Eng. it shall not be lawful for any person to make any policy of assurance upon

any ship, or upon any goods or other property, without first inserting in such policy, the name, or the usual stile

and firm of dealing, of one of the persons interested in such assurance; or without, instead thereof, first insert-

ing in such policy, the name of the usual stile and firm of dealing of the consignor, or consignee, of the goods,

&c. insured; or the name, or the usual stile and firm, of the person residing in Great Britain, who shall receive

the order for such policy of assurance, or of the person who shall give the order to the agent immediately em-

ployed to negotiate such policy of assurance. And by s. 2. every policy of insurance made or under-wrote con-

trary to this act shall be void. No statute has been passed in Ireland similar to those above stated, or restraining

any description of gaming or wagering policies, of the nature of insurances.

By the 17 Geo. 3. c. 26. s. 1. Eng. a memorial of every deed, bond, instrument, or other assurance,

whereby any annuity or rent-charge shall be granted for life or lives, or for any term of years, or greater estate

determinable on one life or more, shall, within 20 days of the execution, be inrolled in chancery; and such

memorial

memorial shall contain the day of the month, and the year, when the deed, &c. bears date, and the name of all the parties, and for whom any of them are trustees, and of all the witnesses; and shall set forth the annual sum to be paid, and the name of the person for whose life the annuity is granted, and the consideration; otherwise every such deed, &c. shall be void. And by s. 2. a like memorial is required to be inrolled, before any judgment shall be entered upon any warrant of attorney for recovering or securing any annuity, &c. already granted, or before execution shall be sued out, or action brought, on any judgment already entered, or on any deed, &c. already executed for the purposes aforesaid; otherwise such judgment, &c. shall be void. By s. 3. in every deed, &c. whereby any annuity, &c. shall be granted, the consideration really and *bona fide*, (which shall be in money only) and the name of the person by whom, and on whose behalf, the consideration, or any part thereof, shall be advanced, shall be truly set forth in words at length, otherwise such deed, &c. shall be void. And by s. 4. if any part of the consideration money shall be returned to the person advancing the same; or in case the consideration, or any part of it, is paid in notes, if any of the notes, with the privity of the person advancing the same, shall not be paid when due, or shall be cancelled without being first paid; or if the consideration, or any part of it, is paid in goods; or if any part of the consideration is retained on pretence of answering the future payments of the annuity, or any other pretence; in all said cases, the person by whom the annuity is payable, may apply to the court in which any action is brought for payment of the annuity, or judgment entered, by motion, to stay proceedings on the judgment or action; and if it shall appear to the court, that such practices, or any of them, have been used, the court may order the deed, &c. to be cancelled, and the judgment, if any entered, to be vacated. By s. 5. a particular roll shall be kept by the clerks of inrolments in chancery, on which such memoria's shall be entered and inrolled, as brought to the office; and said clerks, or their

s. 2.

s. 3.

Deeds of annuity what to contain.

s. 4.

For what practices court may order deed to be cancelled, &c.

s. 5.

Duty of clerk of inrolments.

their deputy, shall specify upon the roll, the day, hour, and time, on which such memorial is brought to the office, and shall grant a certificate of the inrolment when required; and there shall be paid for the inrolment 1s. in case it do not exceed 200 words; but if it exceed 200 words, then after the rate of 6d. for every 100 words; and the like fees for every certificate and copy given; and the fees of 1s. for every search in the office. By

s. 6.

All contracts for annuities with minors void.

s. 6. all contracts for the purchase of any annuity with any person under 21 years shall be void, any attempt to confirm the same, after such person shall have attained 21, notwithstanding. And if any person shall, either in person, by letter, agent, or otherwise, procure, engage, solicit, or ask, any person under 21, to grant any annuity, &c. or to execute any deed, &c. for securing the same; or shall advance or procure, or treat for any money to be advanced, to any person under the age of 21, upon consideration of any annuity, &c. to be secured or granted by such infant after he shall have attained 21; or shall solicit or procure any infant, upon any treaty or transaction for money advanced, or to be advanced, to make oath, or to give his word of honour or solemn promise, that he will not plead infancy, or make any other defence against the demand of such annuity, &c. or the re payment of the money advanced to him when under age; or that when he comes of age, he will confirm, or

Offence of procuring, &c. such grants from minors how punishable.

in any way substantiate, such annuity, &c.; every such person shall be guilty of a misdemeanor, and being convicted in any court of assize, *oyer and terminer*, or general gaol delivery, shall be punished by fine, imprisonment, or other corporal punishment, as the court shall award. By s. 7. all solicitors, scriveners, brokers, and

s. 7.

Brokerage limited to 10s. per cent.

other persons, who shall demand or receive, directly or indirectly, any money or other gratuity for procuring the loan, and for the brokerage of money paid as the consideration of such annuity, &c. over 10s. for every £100 actually paid, shall be guilty of a misdemeanor; and being convicted in any court of assize, *oyer and terminer*, or general gaol delivery, shall be punished by fine and imprisonment, or one of them, at the discretion of the

the court; and the person who shall have paid any money or reward, shall be a competent witness to prove the same. By s. 8. this act shall not extend to any annuity, &c. given by will, or by marriage settlement, or for the advancement of a child; nor if secured upon lands of equal or greater annual value, whereof the grantor was seised in fee-simple or fee-tail, in possession at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the annuity; nor to any voluntary annuity granted without pecuniary consideration; nor to any annuity, &c. granted by any body corporate, or under any act of parliament; nor to any annuity where the sum to be paid does not exceed £10 annually, unless there be more than one such annuity from the same grantor, to or in trust for the same person. No statute in Ireland has restrained improvident transactions of this nature, in any such manner.

s. 8.

*Cases to which
this act does not
extend.*

The rate of interest which was limited to 10 *per cent.* by the 37 Hen. 8. c. 9. Eng. and 13 Eliz. c. 8. Eng. and reduced to 8 *per cent.* by the 21 Jac. 1. c. 17. Eng. and afterwards confined to 6 *per cent.* by the 12 Car. 2. c. 13. Eng. has been settled at 5 *per cent.* by the 12 Ann. st. 2. c. 16. Eng. which enacts, that no person shall, upon any contract, take, directly or indirectly, for loan of any monies, wares, merchandize, or commodities, above the value of £5 for the forbearance of £100 for a year, and so after that rate for a greater or a lesser sum, or for a longer or shorter time; and all bonds, contracts, and assurances, for payment of any principal or money to be lent, [or *covenanted to be performed, upon or for any usury] whereupon or whereby there shall be reserved or taken above the rate of £5 in the £100 as aforesaid, shall be utterly void. And in Ireland the rate of interest which was limited to 10 *per cent.* by the 10 Car. 1. st. 2. c. 22. Ir. and reduced to 8 *per cent.* by the 2 Ann. c. 16. Ir. and to 7 *per cent.* by the 8 Geo. 1. c. 13. Ir. is now confined to 6 *per cent.* by the 5 Geo. 2. c. 7. Ir. which contains a clause corresponding to that of the 12 Ann. st. 2. c. 16. Eng. above stated. The other pro-

*Interest reduced
to £5 per cent.
12 Ann. st. 2.
c. 16. Eng.*

* "covenant
to be performed
upon or for any
loan" in
5 Geo. 2. c. 7.
Ir.

*In Ireland 6
per cent.*

visions

14 Geo. 3.
c. 79. s. 2.
Eng.

*Mortgages, &c.
executed in
Great Britain
affecting lands
in Ireland, &c.
may bear £6
per cent.
interest.*

s. 3.

s. 5.

*Bills of ex-
change when
and how pro-
tested for non-
payment.*

9 & 10 W. 3.
c. 17. Eng.

visions of these statutes will be stated in another place, with relation to the crime of usury. By the 14 Geo. 3. c. 79. s. 2. Eng. all mortgages and securities which shall be made and executed in Great Britain, of or concerning any lands, &c. or other things lying and being in Ireland, or in any of his majesty's colonies in the West Indies, or any estate or interest therein, to any of his majesty's subjects, for securing the re-payment of the money thereon *bona fide* advanced, with interest; and all bonds, covenants, and securities, for payment of the same sums of money, and interest, executed in Great Britain, to any of his majesty's subjects, shall be as valid as if the same were executed in the place where such lands, &c. or other things, lie; and no subject in Great Britain shall be liable to any of the penalties of the 12 Ann. st. 2. c. 16. Eng. so as the interest to be received for the money so *bona fide* lent, do not exceed the rate of £6 for £100 for a year. Provided (s. 3.) that this act shall not make good any such mortgage, &c. where the lender shall, knowingly, advance thereon, more money than the said lands, &c. or other things, shall be, *bona fide*, worth at the time. And provided (s. 5.) that such mortgages, or other securities, by which such lands, &c. or other things, are to be charged or affected, shall be registered within the kingdom, colony, or place, where the said lands, &c. lie, within the time limited by the laws of such place; otherwise the same shall be liable to the provisions of the 12 Ann. unless the person for whose behoof such mortgage, &c. shall have been made or granted, shall have used his utmost endeavour to cause the same to be registered within the time so limited.

By the 9 & 10 W. 3. c. 17. Eng. all bills of exchange drawn in, or dated at or from, any place in England, &c. of the sum of £5 or upwards, upon any person in London or other place, (in which bill the value shall be expressed to be received) and drawn payable at a certain number of days, weeks, or months, after date thereof, may, after acceptance, (which shall be by under-writing the same under the party's hand) and after the expiration of 3 days after the same shall be due, be protested by a notary.

notary public, and in default of such notary public, by any other substantial person of the place, in the presence of 2 or more witnesses, refusal or neglect being first made of due payment of the same; which protest shall be made under a copy of the said bill in the form following: "Know all men that I *A. B.* on the ——— day of ———, at the usual place of abode of the said ———, have demanded payment of the bill,* of ——— which the above is the copy, which the said ——— did not pay.† Wherefore I the said ——— do hereby protest the said bill. Dated this ——— day of ———." Which protest shall, within 14 days after making thereof, be sent, or due notice given thereof, to the party from whom said bill was received, who is, (upon producing such protest) to repay the said bill, with all interest and charges from the day such bill was protested; for which protest shall be paid a sum not exceeding $\text{£}6d.$; and in default of such protest, or due notice, within the days so limited, the person so failing shall be liable to all costs, damages, and interest, which shall accrue thereby. And by s. 3. in case any such inland bill of exchange be lost or miscarried within the time limited for payment, then the drawer shall give another bill of the same tenor, the person to whom it shall be so delivered giving security, (if demanded) to the said drawer, to indemnify him, in case the said bill shall be found again. And the 3 & 4 Ann. c. 9. s. 4. Eng. further provides, that in case, upon presenting any such bill of exchange, the party on whom the same shall be drawn shall refuse to accept the same, by under-writing the same, the party to whom said bill is payable, his servant, agent, or assigns, shall cause said bill to be protested, as in case of foreign bills of exchange; for which protest 2s. shall be paid, and no more. Provided (s. 5.) that no acceptance of any such bill shall charge any person, unless the same be under-written or indorsed; and if such bill be not accepted by such under-writing, &c. no drawer shall be liable to pay any costs, damages, or interest thereupon, unless such protest be made for non-acceptance thereof, and, within 14 days after, sent, or notice thereof given, to the party from

* "or acceptance of the bill" added in 8 Ann. c. 11. Ir.

† "or did not accept" added in 8 Ann. c. 11. Ir.

‡ 2s. by 8 Ann. c. 11. Ir.

s. 3.

3 & 4 Ann. c. 9. s. 4. Eng.

Protest for non-acceptance.

s. 5.

Notice of protest necessary to charge drawer with interest, &c.

from whom such bill was received, or left in writing at the place of his usual abode; and if such bill be accepted, and not paid before the expiration of 3 days after said bill shall be payable, then no drawer shall pay costs, damages, or interest thereon, unless a protest be made and sent, or notice given, as aforesaid; nevertheless, every drawer of such bill shall be liable to costs, &c. if any one protest be made for non-acceptance or non-payment, and notice be sent, &c. as aforesaid. But by

s. 6.

*Bill to be for
£20.*

* £5 by 3 Ann.
c. 11. Ir.

s. 7.

*Bill taken in
satisfaction of a
former debt.*

s. 8.

*Promissory notes
negotiable, and
actions brought
thereon, as in
case of bills of
exchange.*

3 & 4 Ann.
c. 9. s. 1. Eng.

s. 6. no such protest shall be necessary for non-acceptance or non-payment, of any inland bill of exchange, unless the value be expressed in such bill to be received, and unless the bill be drawn for *£20 sterling, or upwards; and the protest, hereby required for non-acceptance, shall be made by such persons as are appointed by the 9 & 13 W. 3. c. 17. s. 1. *supra*. By s. 7. if any person accept such bill of exchange in satisfaction of any former debt, the same shall be esteemed a full payment, if he doth not his endeavour to get the same accepted and paid, and make his protest as aforesaid for non-acceptance or non-payment. Provided s. 8. that nothing herein shall discharge any remedy that any person may have against the drawer, acceptor, or indorser of such bill.

By this statute (s. 1.) all notes in writing signed by any person [‡or body corporate,] or by the servant or agent of any [‡corporation], banker, goldsmith, merchant, or trader, who is usually entrusted by them to sign such promissory notes, whereby such person, &c. shall promise to pay any other person, &c. or order, or bearer, any money mentioned in such notes, shall be, by virtue thereof, due and payable to such person, &c. to whom the same are made payable. And every such note, payable to such person, &c. or order, shall be assignable over as inland bills of exchange are by the custom of merchants;

‡ So much of this act as relates to corporations is omitted in the 3 Ann. c. 11. Ir. : The governor and company of the Bank of England were by virtue of the 5 W. & M. c. 20. Eng. (which incorporates them,) empowered to issue bills assignable by indorsement. But the governor and company of the bank of Ireland were not established or incorporated, until the 21 & 22 Geo. 3. c. 16. Ir. was passed for that purpose.

merchants; and the person, &c. to whom such note is payable, may maintain an action for the same, as upon an inland bill of exchange. And the person, &c. to whom such note so payable to order is indorsed or assigned, may maintain his action against the person, &c. who, or whose servant or agent as aforesaid, signed such note, or against any of the persons that indorsed the same, as in cases of inland bills of exchange, and recover damages and costs of suit; and if plaintiff be nonsuited, or verdict be against him, the defendant shall recover costs; and such plaintiff or defendant respectively may sue out execution by *capias*, *fieri facias*, or *elegit*. And by s. 2. such actions shall be brought within the time appointed for bringing actions by the *21 Jac. 1. c. 16. Eng. "An act for limitation of actions, &c." [†By s. 3. no body corporate shall have power to issue notes other than they might before this act.] The 8 Ann. c. 11. Ir. has incorporated the 9 & 10 W. 3. c. 17. Eng. and 3 & 4 Ann. c. 9. Eng. and contains the same provisions, with such exceptions as are noted in the margin. But the 26 Geo. 3. c. 17. Ir. has increased the fees of public notaries to 4s. for protesting any foreign bill of exchange, and the like sum for protesting any inland bill exceeding £20; and to 2s. 6d. for protesting any inland bill, &c. not exceeding £20; and to 1s. 6d. for noting any bill of exchange, above all stamp duties payable thereon. By the 40 Geo. 3. c. 42. Eng. where bills of exchange and promissory notes become due and payable on Good Friday, the same shall be payable on the day before; and the holders of such bills, &c. may note and protest the same for non-payment on the day preceding Good Friday: No statute in Ireland has provided in any such manner for the better observance of Good Friday.

The negotiation of promissory notes and inland bills of exchange under a limited sum is restrained by the 48 Geo. 3. c. 88. E. (which repeals the 15 Geo. 3. c. 51.) which enacts that all promissory or other notes, bills of exchange or drafts, or undertakings in writing, being negotiable or transferable, for the payment of any money, or any orders, notes or undertakings in writing, being

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2 R

negotiable

* 10 Car. 1. st. 2. c. 6. Ir.

s. 2.

Limitation.

s. 3.

Proviso.

8 Ann. c. 11.

Ir.

26 Geo. 3.

c. 17. Ir.

Fees of protest.

40 Geo. 3.

c. 42. Eng.

Bills and notes
due on Good
Friday shall be
paid the day
before.Negotiation of
notes, &c. un-
der a limited
sum restrained.48 Geo. 3. c. 88.
s. 1. & 2. E.

s. 3.
*Penalty for
uttering them.*

s. 4.
*Justices em-
powered to hear
and determine
offences.*

s. 5.

s. 6.

s. 7.

s. 8.

s. 9.

negotiable or transferable, for the delivery of any goods, specifying their value in money, less than 20s. in the whole, shall be void. And by s. 3. if any person shall by any art, device, or means, publish or utter any such note, &c. for a less sum than 20s. or on which a less sum than 20s. shall be due, and which shall be negotiable, &c. or shall negotiate, &c. the same, such person shall forfeit a sum not exceeding £20, nor less than £5, at the discretion of the justice of peace who shall hear, &c. such offence. By s. 4. any justice of peace of the county, &c. may determine the same in a summary way, within 20 days after such offence shall be committed; and such justice, upon information exhibited or complaint made upon oath, shall summon the party accused, and also the witnesses on either side, and examine into the fact, and upon due proof thereof adjudge the penalty for such offence. And by s. 5. if any person shall be summoned as a witness before such justice, on the part of the prosecutor or person accused, and shall not appear at the time or place appointed, without a reasonable excuse, to be allowed by such justice, he shall forfeit 40s. By s. 6. a form of conviction is prescribed; which the justice shall return to the next general quarter sessions of the place where such conviction was made, to be filed by the clerk of the peace. And by s. 7. it shall be lawful for such clerk of the peace, upon application made by any person, forthwith to deliver a copy of such conviction upon payment of 1s. for each copy. By s. 8. one moiety of said penalties shall be to the informer, and the other to the poor of the parish or place, &c.: and in case such person shall not pay the same, or give sufficient security to prosecute any appeal against such conviction, such justice shall by warrant cause the same to be levied, by distress and sale of the offenders goods, together with all costs attending the distress, &c.; and a form is hereby prescribed for such warrant of distress. And by s. 9. such justice may order such offender to be detained until the return to such warrant of distress, unless he shall give sufficient security for his appearance before said justice, on such day

day as shall be appointed by said justice for the return of such warrant, not exceeding 5 days from the taking of such security. And by s. 10. if upon such return no sufficient distress can be had, then such justice shall commit such offender to the common gaol, or house of correction, of the county, &c. for 3 calendar months, unless the money forfeited be sooner paid, or until such offender shall give notice to the informer that he intends to appeal to the justices at the next general quarter sessions for such county, &c. and shall enter into recognizance before some justice, with 2 sufficient sureties, conditioned to try such appeal, and to abide the order of, and pay such costs as shall be awarded by, the justices at such sessions; which notice of appeal shall not be less than 8 days before the trial thereof; and the justices at such sessions, upon proof of such notice being given, and of the entering into such recognizance, shall hear such appeal, in a summary way, and award such costs to the parties as they shall think proper; and such determination shall be final. By s. 11. no person shall be disabled from being a witness in any such prosecution, by reason of his being an inhabitant of the parish where the offence was committed. And by s. 12. no proceedings touching any conviction under this act, shall be quashed for want of form, or be removed by *certiorari* or other process. By s. 13. all actions for any thing done in pursuance of this act shall be commenced within 3 calendar months after the fact; and be brought within the county where such fact was committed; and the defendant may plead the general issue, and give this act and the special matter in evidence; and if it shall appear to have been done in pursuance and by authority of this act, or if such action shall be brought after the time so limited, or brought or laid at any other place than as aforesaid, the jury shall find for the defendant; or if the plaintiff be non-suit or discontinue, or if upon demurrer judgment be given against him, the defendant shall recover treble costs. By the 45 Geo. 3. c. 41. s. 3. I (which repeals the 39 Geo. 3. c. 48. Ir. 40 Geo. 3. c. 64. Ir. 43 Geo. 3. c. 87. I. and 44 Geo. 3. c. 91. I. save as to the recover-

s. 10.

s. 11.

s. 12.

s. 13.

45 Geo. 3. c. 41.
s. 3. I.In Ire^land also
notes, &c. un-
der 20s. void.

*Penalty for
issuing them.*

*s. 4.
What shall be
construed notes,
&c.*

*17 Geo. 3. c. 30.
s. 1. Eng.*

*Notes, &c.
under £5 to be
issued in a cer-
tain form.*

ing any penalties incurred under said acts), all promissory notes or undertakings in writing being negotiable or transferable for any sum of money less than 20s. Irish currency, or on which any sum less than 20s. Irish shall remain undischarged, which shall bear date, or shall have been or shall be issued in Ireland, after the 1st January, 1805, shall be void, and not negotiable, &c.; and the person issuing the same shall forfeit £10 Irish, for every such note, &c. so issued; and the person giving or taking the same after said day, shall forfeit double the amount of each such note, &c. to any person who shall sue for the same; and such penalties shall be recovered before any justice of peace in Ireland, upon the oath of one witness; &c. and in case such penalties shall not be paid, such justice may by his warrant cause the same to be levied by distress and sale of the offenders goods, together with all costs and charges attending such conviction and sale; and if such offender shall not have sufficient goods, he shall be committed to the common gaol or house of correction, by warrant of such justice, for any time not less than 1 month nor more than 3 months, unless such penalty be sooner paid. And by s. 4. any memorandum, ticket, token, draft, certificate, or engagement, written, printed, or engraved, on paper, card, vellum, or parchment, being negotiable or transferable, or which shall have been, or shall be given, negotiated, or transferred, with intent to imply, or to make, a promise or engagement to pay money or value of any kind, in goods or otherwise, under the sum of 20s. Irish, or on which a less sum than 20s. Irish shall remain undischarged, shall be deemed an undertaking in writing to all intents. By the 17 Geo. 3. c. 30. Eng. all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable for the payment of 20s. or above that sum, and less than £5; or on which 20s. or above, and less than £5, shall remain undischarged, shall specify the names and places of abode of the persons to whom, or to whose order, the same shall be made payable; and shall bear date before or at the time of drawing, and not on any day subsequent thereto,

thereto, and shall be made payable within 21 days after the day of the date thereof; and shall not be negotiable, &c. after the time thereby limited for the payment thereof; and every indorsement thereon shall be made before the expiration of that time, and bear date at or not before the time of making thereof; and shall specify the name and place of abode of the person to whom, or to whose order, the money contained in such note, &c. is to be paid; and the signing of every such note, &c. and of every such indorsement, shall be attested by one subscribing witness at the least: and which said notes, &c. may be drawn in words to the effect set out in the schedules to this act annexed. And all such notes, &c. issued within England, in any other manner, and also every indorsement on any such note, &c. other than as aforesaid, shall be void. And by s. 2. the publishing, uttering, or negotiating, within England, of any note, &c. for 20s. &c. issued or made in any other manner than as aforesaid; and also the negotiating of any such note, &c. after the time appointed for payment thereof, or before that time in any other manner than as aforesaid, by any act, contrivance, or means, shall be under the like penalties, to be recovered and applied in like manner as by the 15 Geo. 3. c. 51. Eng. was directed with respect to notes, &c. under 20s. (which clauses so referred to are contained in the 48 Geo. 3. c. 88. *supra*.) But by the 37 Geo. 3. c. 28. Eng. the governor and company of the bank of England are empowered to issue notes payable to bearer for any sum of money under £5. The 39 Geo. 3. c. 48. Ir. contained clauses analogous to the 17 Geo. 3. c. 30. Eng. but was repealed by the 45 Geo. 3. c. 41. *supra*. By the 19 & 20 Geo. 3. c. 25. s. 11. Ir. all mercantile companies or partnerships shall set forth in their promissory notes, (invoices, bills of parcels, and custom-house entries,) the names of the several individuals of which such partnerships, &c. do consist: But by the 26 Geo. 3. c. 34. Ir. this provision shall not extend to partnerships formed under the 21 & 22 Geo. 3. c. 46. Ir. *ante* page 556. These clauses are peculiar to the law of Ireland.

s. 2.

Penalty for negotiating, &c. notes, &c. contrary to this act.

37 Geo. 3.
c. 28. Eng.

Exception as to the bank of England.

19 & 20 Geo. 3.
c. 25. s. 11. Ir.

Names of all partners to be set forth in notes, &c.

26 Geo. 3.
c. 34. Ir.

Except anonymous.

It

Temporary restriction on payments in cash.

It may be proper here to refer to the 44 Geo. 3. c. 1. E. which continues until 6 months after the ratification of a definitive treaty of peace, the restrictions (contained in the 37 Geo. 3. c. 45. Eng. 37 Geo. 3. c. 91. Eng. 38 Geo. 3. c. 1. Eng. 42 Geo. 3. c. 40. and 43 Geo. 3. c. 18.) on payments of cash by the bank of England: And the 44 Geo. 3. c. 21. I. has continued the restriction on payments in cash by the bank of Ireland, (which were imposed by the 37 Geo. 3. c. 51. Ir. 42 Geo. 3. c. 45. and 43 Geo. 3. c. 44.) until 3 months after such restriction on the bank of England shall cease.

CHAP. XXII.

Of Title by Bankruptcy.

THE first statute made in England concerning bankrupts was the 34 & 35 Hen. 8. c. 4. Eng. which recited, that sundry persons, craftily obtaining into their hands other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay their creditors their debts and duties, &c; and therefore provided, that the lord chancellor, lord treasurer, lord president, lord privy seal, and others of the king's privy council, the chief justices of either bench, or three of them at the least, (whereof the lord chancellor, lord treasurer, lord president, or lord privy seal, to be one,) should have power to take order and direction with the bodies of such [*offenders] and with their lands and goods; and to cause their lands, &c. to be appraised and sold for the satisfaction of their creditors, according to the quantity of their debts. But as this statute seems to have been altogether superseded by the 13 Eliz. c. 7. Eng. and the subsequent English statutes, I have therefore merely stated its outline or principle.

* This term is also used to designate bankrupts in the 13 Eliz. c. 7. Eng. and 2 Jac. 1. c. 15. Eng.

principle. The 11 & 12 Geo. 3. c. 8. Ir. is the first and principal Irish statute respecting bankrupts; and, to avoid repetition, I must here observe, that this act has incorporated, with a few deviations, the provisions of the 13 Eliz. c. 7. Eng. 2 Jac. 1. c. 15. Eng. 21 Jac. 1. c. 19. Eng. 10 Ann. c. 15. Eng. 7 Geo. 1. st. 1. c. 31. Eng. 5 Geo. 2. c. 30. Eng. 19 Geo. 2. c. 32. Eng. 24 Geo. 2. c. 57. Eng. and 4 Geo. 3. c. 33. Eng. In abridging and arranging the English acts upon this subject, I shall, therefore, at the same time refer to the corresponding sections of this Irish statute.

As to the description of persons *who may become bankrupts, and by what acts*, the 13 Eliz. c. 7. s. 1. Eng. *Who may become bankrupts, and by what acts.* as amended by the 2 Jac. 1. c. 15. s. 2. Eng. 21 Jac. 1. c. 19. s. 2 & 15 Eng. and 5 Geo. 2. c. 30. s. 39. Eng. 13 Eliz. c. 7. s. 1. Eng. 2 Jac. 1. c. 15. s. 2. Eng. 21 Jac. 1. c. 19. s. 2 & 15. Eng. 5 Geo. 2. c. 30. s. 39. Eng. provides, that every person using the trade of merchandize, [*by way of bargaining, exchange, re-change, bartering, chevissance, or otherwise,] in gross or by retail or seeking his living by buying and selling,† or that shall use the trade or profession of a scrivener, [*receiving other mens' monies or estates into his trust or custody,] ‡ or banker, broker, or factor, as well strangers born, aliens or denizens, as natural born subjects; who shall § depart the realm, or begin to keep his house, or otherwise to absent himself, || or take sanctuary, or suffer himself willingly to be arrested [¶for debt or other thing not due for money delivered, wares sold, or other good consideration] or will suffer himself to be outlawed, or yield himself to prison, or willingly or fraudulently procure himself to be arrested, or his goods, money, or chattels, to be attached, or sequestered‡‡; or depart from his dwelling house, or make any fraudulent grant or conveyance of his lands, tenements, goods or chattels, to the intent, or whereby

* The words within the crotchets not in the 11 & 12 Geo. 3. c. 8. Ir.

† “Or dealing in exchange” added in 11 & 12 Geo. 3. c. 8. Ir.

‡ “Salesmaster” here added in 11 & 12 Geo. 3. c. 8. Ir.

§ “Abscond” here added by the 11 & 12 Geo. 3. c. 8. Ir.

|| “So that his creditors cannot have access to him” here added in 11 & 12 Geo. 3. c. 8. Ir.

¶ “Without just cause or good consideration” substituted in 11 & 12 Geo. 3. c. 8. Ir.

‡‡ “Or taken in execution” here added in 11 & 12 Geo. 3. c. 8. Ir.

whereby his creditors may be defeated or delayed from the recovery of their just debts, or who shall obtain any protection, (other than such persons as shall be lawfully protected by privilege of parliament,) or shall prefer unto the king, or unto any of the king's courts, any petition or bill against any creditor to compel him to accept less than his just and principal debt, or to procure time or longer days of payment, than was given at the time of the original contract, or, being arrested for debt shall lie in prison 2 months upon that or any other arrest or detention in prison for debt; or, being arrested for £100 or more of just debt, shall escape out of prison;* shall be adjudged bankrupts; and in the cases of arrests, or lying in prison for such debts, shall be deemed bankrupts from the time of the first arrest. † But the 5 Geo. 2. c. 30. s. 40. Ir. provides, that no farmer, grazier, or drover, [§ or receiver general of taxes,] shall be entitled, as such, to the benefits given by this act, or be deemed a bankrupt. ¶ The 11 & 12 Geo. 3. c. 8. s. 1. & 2. Ir. has incorporated (with such deviations as are noted in the margin) the several clauses of the 13 Eliz. c. 7. 2 Jac. 1. c. 15. 21 Jac. 1. c. 19. and 5 Geo. 2. c. 30. above mentioned, which for greater clearness I have thus embodied.

5 Geo. 2. c. 30. s. 40. Ir.

Farmers, &c. excluded.

11 & 12 Geo. 3. c. 8. s. 1. & 2. Ir.

Traders having privilege of parliament deemed bankrupts if money recovered not paid in 2 months.

4 Geo. 3. c. 33. s. 1. Eng.

With respect to traders having privilege of parliament: the 4 Geo. 3. c. 33. Eng. provides, that it shall be lawful for any single creditor, or 2 or more creditors being partners, whose debt or debts shall amount to £100; and for any 2 creditors whose debts shall amount to £150; or any 3 or more creditors whose debts shall amount to £200; of any person deemed a merchant, banker, broker, factor, scrivener, or trader, within the description of the acts relating to bankrupts, having privilege of parliament, upon affidavit being made and filed on record in any of his majesty's courts at Westminster by such creditor or creditors,

* The 11 & 12 Geo. 3. c. 8. s. 1. Ir. also includes here every trader having privilege of parliament, who shall neglect to make satisfaction for any just debt of £100, within 2 months after service of legal process.

† The 21 Jac. 1. c. 19. Eng. so far as regards certain other acts of bankruptcy is repealed by the 10 Ann. c. 15. s. 1. Eng.

§ "Receiver general of taxes" not excluded by the 11 & 12 Geo. 3. c. 8. 1r.

¶ Members of certain corporate trading companies are excepted by several statutes of a special nature.

creditors, that such debt or debts is or are justly due, and that such debtor, as he or they verily believe, is a merchant, &c. within the description of the statutes relating to bankrupts, to sue out of the same court a summons, or an original bill and summons, against such merchant, &c. and serve him with a copy thereof; and if such merchant, &c. shall not, within 2 months after personal service of such summons, (affidavit of the debt, &c. having been duly made and filed as aforesaid) pay, secure, or compound for, such debt, &c. to the satisfaction of such creditor, &c. or enter into a bond in such sum, and with 2 such sufficient sureties as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action, together with costs, he shall be adjudged a bankrupt from the time of the service of such summons: and any creditor may sue out a commission and proceed thereon as against other bankrupts. And by s. 3. if any merchant, &c. shall commit any act of bankruptcy, then any creditor or creditors may sue out a commission of bankrupt against such merchant, &c. and the commissioners may proceed thereon as against other bankrupts; any privilege of parliament to the contrary notwithstanding. Provided (s. 4.) that this act shall not subject any person entitled to privilege of parliament to be arrested or imprisoned during the time of such privilege, except in cases made felony by the acts relating to bankrupts. The 45 Geo. 3. c. 124. G. B. recites that this provision of the 4 Geo. 3. c. 33. Eng. hath been rendered nugatory, by the difficulty of enforcing appearances in the actions in which such bonds have been given; and therefore enacts, that when any summons, or original bill and summons, shall be sued out against any person deemed a merchant, &c. within the description of the bankrupt acts, [having privilege of parliament, (and such affidavit made and filed, and such bond entered into as in the 4 Geo. 3. mentioned) such merchant, &c. shall, within 2 months after personal service of such summons, cause an appearance to be entered to such action, and in default thereof he shall be adjudged a bankrupt from

s. 3.

*No privilege
where act of
bankruptcy com-
mitted;*

s. 4.

*Except of per-
son.*

45 Geo. 3.
c. 124. G. B.

*Privileged tra-
der to appear to
process in 2
months, or
deemed bank-
rupt.*

When appearance may be entered for such privileged trader.

s. 3.

Privileged trader deemed bankrupt by non-payment of money decreed, &c. by Ch. or Exc.

s. 7.

s. 8.

Saving for personal privilege.

from the time of the service of such summons; and every creditor may sue out a commission, and proceed thereon, as against other bankrupts. And to avoid the expense and delay of proceeding by *distringas*, it is enacted (s. 3.) that when any summons, or original bill and summons, shall be sued out against any person having privilege of parliament, and no such affidavit shall be made and filed as in the 4 Geo. 3. mentioned; if the defendant shall not appear at the return of the summons, or within 8 days after such return, the plaintiff, upon affidavit being made and filed in the proper court, of the personal service of such summons, (which affidavit shall be filed *gratis*) may enter an appearance for the defendant, and proceed thereon. And by s. 7. when any decree or order shall be pronounced in the court of Ch. or Exc. or any order shall have been made in the matter of any bankruptcy, or lunacy, against any person being a merchant, &c. having privilege of parliament, thereby ordering such person to pay any sum of money to any person, or into the bank in the name of the accountant general of the court of Ch. or to the deputy remembrancer of the court of Exc. if such person shall disobey such order, &c. the same having been duly served, then any person entitled to receive such sum by virtue of such order, &c. or interested in enforcing the payment thereof, may, in the name of the said accountant general, or deputy remembrancer, apply to the court to fix a peremptory day for the payment of such money pursuant to the terms of such order, &c.; and such day shall be accordingly appointed by an order made in such cause, or in such matter: and if such merchant, &c. being personally served with such order, 8 days before the day therein appointed for payment of such money, shall omit to pay the same according to such order, he shall be deemed a bankrupt from the service of such last mentioned order; and any creditor may sue out a commission against such person, and proceed thereon. Provided (s. 8.) that this act shall not extend to subject any person entitled to privilege of parliament to be arrested, restrained, or imprisoned, during the term of such privilege. By the

17 & 18 Geo. 3. c. 48. s. 3. Ir. before any process shall be served on any trader having privilege of parliament, for any debt of £100 as in the 11 & 12 Geo. 3. c. 8. *ante* is

mentioned, an affidavit shall be made by the creditor, or in case such debt shall be owing to partners, then by one partner, and filed of record in one of his majesty's courts of record in Dublin, that such is justly due by such per-

son so intended to be served, and that such debtor, as he verily believes, is a trader within the meaning of the

11 & 12 Geo. 3. c. 8. And by s. 4. if any trader having privilege, &c. and being so served with process, shall,

within 2 months after such service, enter into a bond in such sum, and with 2 such sufficient sureties, as any judge or judges of the court out of which such process

shall issue, shall approve, to pay such sum as shall be recovered in such action, with the costs; then, upon

shewing to the lord chancellor that such bond was entered into within the time so appointed, any commission that

shall have issued against such privileged trader shall be superseded, and the usual bond given by the person suing

out such commission shall be assigned to the person against whom such commission issued, as a security for

his damages and costs; but in case such satisfaction shall not be made, nor such bond given within such time, then

any creditor may sue out a commission against such person, and proceed thereon. But this act provides (s. 5.)

that if any merchant, banker, broker, factor, scrivener, or trader, shall commit any act of bankruptcy, any cre-

ditor may sue out a commission of bankrupt against such merchant, &c. and the commissioners, and others, may

proceed thereon notwithstanding any privilege of parliament. In order to obviate the inconveniencies arising

from members of the house of commons, against whom commissions of bankruptcy shall issue, continuing to

hold their seats in parliament, the 19 & 20 Geo. 3. c. 25. s. 9. Ir. enacts, that where a commission shall issue against

any such member, and shall not be superseded within 6 months from the time of issuing thereof; and the credi-

tors proving their debts under the same shall not be paid or satisfied to the full amount thereof under such com-

mission,

17 & 18 Geo. 3.
c. 48. s. 3.
Ir.

*Affidavit of
debt required be-
fore process
against privi-
leged trader.*

s. 4.

*If privileged
trader shall give
security, bank-
ruptcy super-
seded.*

s. 5.

*No privilege
where act of
bankruptcy com-
mitted.*

19 & 20 Geo. 3.
c. 25. s. 9. Ir.

*If commission
not superseded
in 6 months,
seat in parlia-
ment vacated.*

mission, within 6 months after the issuing thereof; or, with respect to such debts as shall be disputed by such bankrupt, if he shall not within the time aforesaid enter into a bond in such sum, and with 2 such sufficient sureties, as the commissioners shall approve of, to pay such sum as shall be recovered or established, in law or equity, together with the costs; then the commissioners shall, immediately after the expiration of 6 months from the issuing of such commission, certify to the speaker of the house of commons that such commission had issued, and was not superseded within the time aforesaid; and that the creditors proving their debts under such commission were not paid or satisfied to the full amount thereof under such commission, within 6 months from the issuing thereof; and that such bonds as aforesaid had not been entered into within that time with respect to such of the debts as the bankrupt shall dispute; and thereupon the seat of such bankrupt shall be considered vacant in all respects, and the speaker shall issue his writ to elect another member; and such bankrupt shall be incapable of being elected to serve in parliament, until his creditors shall be fully satisfied the amount of their several debts proved under any such commission. It may however admit of a question, whether this provision which related to the house of commons of Ireland, is to be considered in force with respect to the members of the imperial parliament.

§ 2.

Amount of petitioning creditors debt.

5 Geo. 2. c. 30. s. 23. Eng.
11 & 12 Geo. 3. c. 8. s. 10. Ir.

Bond to the chancellor.

II. Next as to the *proceedings upon a commission of bankrupt*: By the 5 Geo. 2. c. 30. s. 23. Eng. and 11 & 12 Geo. 3. c. 8. s. 10. Ir. no such commission shall be awarded unless the single debt of the creditor, or of 2 or more persons being partners, petitioning for the same, shall amount to £100; or unless the debt of 2 creditors, &c. shall amount to £150; or of 3 or more creditors, &c. to £200: And the creditors petitioning shall, before the same be granted, make affidavit or affirmation in writing, before a master in chancery, (which shall be filed in the proper office) of the truth and reality of such debts; and shall give bond to the lord chancellor, in the penalty of £200, conditioned for proving such debts as well before the

the commissioners named in such commission, as upon a trial at law, in case the due issuing forth of the same shall be contested; and also for proving the party a bankrupt at the time of taking out such commission; and further to proceed on such commission as herein is mentioned: But if such debt shall not be really due, or if it cannot be proved that the party was a bankrupt at the time of the issuing the commission, but on the contrary it shall appear that such commission was taken out fraudulently, or maliciously, then the lord chancellor may, upon the petition of the party aggrieved, order satisfaction to be made for the damages sustained, and assign the bond to such party, who may sue for the same in his own name. And by the 5 Geo. 2. c. 30. s. 22. Eng. and 11 & 12 Geo. 3. c. 8. s. 13. Ir. persons taking bills, notes, or other securities, payable at a future day, may petition for a commission, or join in petitioning. The 19 & 20 Geo. 3. c. 25. s. 8. Ir. provides, that an affidavit or affirmation of any creditor not residing in this kingdom, being made before the magistrate of the city, town, or place, and certified by a notary public where the creditor lives, of the amount of his debt, and transmitted to Ireland, and exhibited to the lord chancellor as by the 11 & 12 Geo. 3. c. 8. Ir. is required for petitioning creditors, the lord chancellor shall, thereupon, have power to issue a commission of bankruptcy: which clause is peculiar to this Irish statute. By the 5 Geo. 2. c. 30. s. 24. Eng. and 11 & 12 Geo. 3. c. 8. s. 11. Ir. if any bankrupt shall, after issuing of any commission against him, pay to the person who sued out the same, or deliver to him goods or other satisfaction or security for his debt, whereby such person shall privately have more in the pound in respect of his debt than the other creditors, such payment of money, &c. shall be deemed to be such an act of bankruptcy, whereby on proof thereof the commission shall be superseded; and it shall be lawful for the lord chancellor to award to any creditor petitioning another commission; and such person so taking or receiving such goods, or other satisfaction, shall forfeit his whole debt, and the whole he shall have received, and shall pay back and deliver up the same,

5 Geo. 2. c. 30.
s. 22. Eng.
11 & 12 Geo. 3.
c. 8. s. 13. Ir.

Security payable in futuro may ground petition.

19 & 20 Geo. 3.
c. 25. s. 8. Ir.

Creditor residing abroad may petition for commission.

5 Geo. 2. c. 30.
s. 24. Eng.
11 & 12 Geo. 3.
c. 8. s. 11. Ir.

If petitioning creditor colludes with bankrupt, he forfeits his debt, &c. and commission superseded.

same, or the value thereof, to such person as the new commissioners shall appoint, in trust for the other creditors.

Appointment of commissioners.

13 Eliz. c. 7.
s. 2. Eng.
11 & 12 Geo. 3.
c. 8. s. 3. Ir.

By the 13 Eliz. c. 7. s. 2. Eng. and 11 & 12 Geo. 3. c. 8. s. 3. Ir. the lord chancellor, upon every such petition or complaint made to him in writing, shall have power to appoint such wise, honest, and discreet persons, as to him shall seem good, who, or the major part of them, shall have power to take such order and direction with the body of such person wheresoever he

† “privileged place” in 11 & 12 Geo. 3. c. 8. Ir.

may be had, in his house, †sanctuary, or elsewhere, by imprisonment of his body, as also with all his lands, tenements, hereditaments, [*as well copy-hold as freehold,] which he shall have or be entitled to in his own right before he became bankrupt; and also with such lands, &c. as such person shall have purchased for money or other

† “or with any other person” here added in 11 & 12 Geo. 3. c. 8. Ir.
5 Geo. 2. c. 30. s. 43. & 44. Eng.
11 & 12 Geo. 3. c. 8. s. 15. Ir.

recompense, jointly with his wife, children or child, ‡to the use of such bankrupt; or of or for such use or title as such bankrupt shall then have in the same; or with any person in trust to any secret use of such bankrupt;|| and also with his money, goods, chattels, wares, merchandizes, and debts, wheresoever they may be found.

Oath of commissioners.

By the 5 Geo. 2. c. 30. s. 43. & 44. Eng. and 11 & 12 Geo. 3. c. 8. s. 15. Ir. the commissioners shall not be capable of acting until they respectively have taken an oath to the effect following: “I *A. B.* do swear, that I “will faithfully, impartially, and honestly, according to “the best of my skill and knowledge, execute the several “powers and trusts reposed in me as a commissioner in a “commission of bankrupt against ———, and that with- “out favour or affection, prejudice or malice. So help “me God.” Which oath any two of the commissioners may administer to each other, and shall keep a memorial thereof signed by them amongst the proceedings on each commission.

Person declared bankrupt, and assignees chosen.

By the 5 Geo. 2. c. 30. s. 26. & 27. Eng. and 11 & 12 Geo. 3. c. 8. s. 18. & 19. Ir. the commissioners shall, forth- with

* “Or freehold, and all covenants of renewal of such freehold,” in 11 & 12 Geo. 3. c. 8. Ir.

|| This clause of the Irish act also incorporates the provision of the 21 Jac. 1. c. 19. s. 12. Eng. *post.*

with, after they have declared the person against whom such commission shall issue a bankrupt, give notice thereof in the Gazette, and appoint a time and place for the creditors to meet, (which meeting for the city of London, and all places within the bills of mortality, shall be at the Guildhall*) in order to choose assignees; at which meeting the commissioners shall admit the proof of any creditors debt, that shall live remote from the place of such meeting, by affidavit or affirmation; and also permit any person duly authorized by letter of attorney (oath or affirmation being made of the execution thereof, either before a master in chancery, ordinary or extraordinary, or before the commissioners, *viva voce*; and in case of creditors residing in foreign parts, such affidavits or affirmations to be made before a magistrate where the party shall be residing, and, together with such creditors' letter of attorney, attested by a notary public) to vote in the choice of assignees in the place of such creditors; and the commissioners shall assign such bankrupt's estate unto such persons as the major part in value of such creditors, according to the debts then proved, shall choose. Provided that no creditor, or other person on behalf of any creditor, shall vote in such choice of assignees, whose debt, or the debt of the person so authorizing him to vote, shall not amount to the sum of £10. But by the 5 Geo. 2. c. 30. s. 30. Eng. and 11 & 12 Geo. 3. c. 8. s. 20. Ir. the commissioners may, for the better preserving and securing the bankrupt's estate, immediately appoint one assignee, or more; which assignees, or any of them, may be removed at the meeting so to be appointed for the choice of assignees as aforesaid, if the major part in value of them then present, and of such persons authorized as aforesaid, shall think fit; and such assignees as shall be removed shall deliver up and assign all the estate and effects unto the assignees chosen by the creditors; and if any such first assignee shall refuse or neglect, by the space of 10 days after notice of the choice of such new assignees, and of their consent to accept such assignment,

5 Geo. 2. c. 30. s. 26. & 27.

Eng.

11 & 12 Geo 3. c. 8. s. 18. & 19.

Ir.

Who to vote in choice of assignees.

5 Geo. 2. c. 30. s. 30. Eng.

11 & 12 Geo. 3. c. 8. s. 20. Ir.

Appointment of provisional assignees.

* For the city of Dublin, and county of said city, at the Tholsel or Royal Exchange, by 11 & 12 Geo. 3. c. 8. Ir.

* "above the value of the effects so detained" added in 11 & 12 Geo. 3. c. 8. Ir.

† "Dublin" by 11 & 12 Geo. 3. c. 8. Ir.

5 Geo. 2. c. 30. s. 23. Ir. in case it shall be found necessary to vacate the s. 31. Eng.

11 & 12 Geo. 3. c. 8. s. 23. Ir.

Appointment of new assignees.

ment, signified by writing under their hands, to make such assignment and delivery, such assignee shall forfeit £200* to be distributed amongst the creditors in like manner as the estate of the bankrupt; to be recovered by action of debt, &c. in any court of record at [†Westminster] with full costs, by such person as the commissioners shall appoint to sue for the same. And by the 5 Geo. 2. c. 30. s. 31. Eng. and 11 & 12 Geo. 3. c. 8. s. 23. Ir. in case it shall be found necessary to vacate the appointment of assignees, whether made by the commissioners, or pursuant to the choice of creditors, the lord chancellor may, upon petition of any creditor, make such order therein as he shall think just; and in case a new assignment shall be ordered, the effects of such bankrupt shall be thereby effectually vested in such new assignees, and it shall be lawful for them to sue for the same in their own names, and to give any acquittance for debts, as the former assignees might have done; and the commissioners shall cause public notice to be given thereof in the 2 Gazettes that shall immediately follow the removal of such assignees, and the appointment of others.

Bankrupt when to surrender.

5 Geo. 2. c. 30. s. 1. Eng.

11 & 12 Geo. 3. c. 8, s. 24. Ir.

By the 5 Geo. 2. c. 30. s. 1. Eng. and 11 & 12 Geo. 3. c. 8. s. 24. Ir. if any person who shall become bankrupt, and against whom a commission shall issue, whereupon he shall be declared a bankrupt, shall not, within 42 days after notice in writing being left at the usual place of abode of such person, or after personal notice in case such person be in prison, (notice being also given in the Gazette,) that such commission hath been issued, and of the time and place of a meeting of the commissioners, surrender himself to the commissioners, and subscribe such surrender, and submit to be examined from time to time upon oath or affirmation before such commissioners, and in all things conform to the statutes concerning bankrupts, and fully and truly disclose and discover all his estate and effects, real and personal, and how and in what manner, and to whom, and upon what consideration, and at what times he hath disposed of, or transferred any of his estate and effects, (and all books, papers, and writings,

ings, relating thereto) of which he was possessed, or interested in, or whereby such person, or his family, hath, or may expect, any possibility of advantage, (except such part as shall have been *bona fide* disposed of in the way of his trade, and except such money as shall have been laid out in the ordinary expense of his family,) and also, upon such examination, deliver up unto the commissioners such part of his effects, and all books and writings relating thereunto, as shall be in his power, (the necessary wearing apparel of such bankrupt, or of his wife and children, excepted) then the bankrupt, in case of default in not surrendering and submitting as aforesaid, or in case he shall conceal or embezzle his estate, to the value of £20, or any books of account, or writings, relating thereto, with intent to defraud his creditors, (and being convicted by indictment) [*or information] shall be guilty of felony without benefit of clergy; and such felon's goods and estate shall go amongst the creditors seeking relief under such commission. By the 5 Geo. 2. c. 30. s. 2. & 3. Eng. and 11 & 12 Geo. 3. c. 8. s. 25. & 26. Ir. the commissioners shall appoint, within the said 42 days, 3 several meetings for the bankrupt to surrender and conform as aforesaid, the last of which shall be on the 42d day limited for such bankrupt's appearance; and [†3 weeks] notice shall be given in the gazette of the time and place of such meetings. But it shall be lawful for the lord chancellor to enlarge the time for such person surrendering himself, and discovering his effects, not exceeding 50 days from the end of the said 42 days; so as such order for enlarging the time be made 6 days before the time on which such person was to surrender himself. By the 5 Geo. 2. c. 30. s. 4. & 5. Eng. and 11 & 12 Geo. 3. c. 8. s. 27. & 28. Ir. every such bankrupt, after assignees shall be appointed, shall deliver upon oath, or affirmation, before a master in chancery, or before a justice of peace within his jurisdiction, all books of account, papers, and writings, not seized by the messenger of the commission, or not before delivered up to the commissioners, and then in his power, and discover such as are in the power of any other person that

Felony not to surrender, disclose, and deliver property.

* Omitted in 11 & 12 Geo. 3. c. 8. s. 24. Ir.

5 Geo. 2. c. 30. s. 2. & 3. Eng. 11 & 12 Geo. 3. c. 8. s. 25-6. Ir.

Time for surrendering.

+ "10 days" by the 11 & 12 Geo. 3. c. 8. s. 26. Ir.

May be enlarged.

5 Geo. 2. c. 30. s. 4. & 5. Eng. 11 & 12 Geo. 3. c. 8. s. 27. & 28. Ir.

Bankrupt to deliver books, &c.

*Privileged from
arrest during
examination.*

*Penalty for ar-
resting him
during such
time.*

* "Dublin" by
11 & 12 Geo. 3.
c. 8. Ir.
5 Geo. 2. c. 30.
s. 14. & 15.
Eng.
11 & 12 Geo. 3.
c. 8. s. 30-1. Ir.

*Commissioners
how to proceed
to have bankrupt
apprehended.*

any ways concern his estate; and every such bankrupt, not in prison, shall after such surrender be at liberty, and is required, to attend the assignees, upon notice in writing, given to him by the assignees, or left at his place of abode, in order to assist in making out the accounts of the estate. And every bankrupt having surrendered, shall, at all seasonable times, before the expiration of the said 42 days, or such farther time as shall be allowed to finish his examination, be at liberty to inspect his books and writings, in the presence of some person to be appointed by the assignees, and to bring with him for his assistance such persons as he shall think fit, not exceeding two at one time, and to make extracts and copies to enable him to make a full discovery of his effects; and the said bankrupt shall be free from arrests in coming to surrender, and from actual surrender for the said 42 days, or such further time as shall be allowed for finishing his examination; provided such bankrupt was not in custody at the time of surrender; and in case such bankrupt shall be arrested for debt, or on any escape warrant, coming to surrender, or after his surrender, within the time before mentioned, then, on producing such summons or notice under the hands of the commissioners, or assignees, and giving the officer a copy thereof, he shall be discharged; and in case any officer shall detain such bankrupt, such officer shall forfeit to such bankrupt for his own use, £5 for every day he shall detain him; to be recovered by action of debt, in the name of the bankrupt, in any court of record at [*Westminster,] with full costs. By the 5 Geo. 2. c. 30. s. 14. & 15. Eng. and 11 & 12 Geo. 3. c. 8. s. 30. & 31. Ir. upon certificate under the hands and seals of the commissioners that such commission is issued, and such person proved before them to be a bankrupt, it shall be lawful for any judge of K. B. C. B. or Exc. or for any justice of peace, to grant a warrant,† under

† By the 2 Jac. 1. c. 15. s. 6. Eng. the power given to the commissioners of issuing a warrant to apprehend the bankrupt, was after 3 warnings in writing left at the dwelling place where the bankrupt, his wife or family, did for the most part remain within one year before he became bankrupt; and after 5 proclamations, at such public places as the commissioners should think meet, warning him to appear before them. And by the 13 Eliz.

under the hand and seal of such judge or justice, for the apprehending of such person, and him to commit to the common gaol of the county where he shall be apprehended, there to remain until he be removed by the order of the commissioners, under their hands and seals; and the gaoler to whose custody such bankrupt shall be committed, shall give notice to one or more of the commissioners, of such person being in his custody, who shall forthwith send a warrant for delivering such bankrupt to the person to be named in such warrant, to the intent that such bankrupt may be brought before the commissioners for examination; and such commissioners may

And his effects seized.

by such warrant, or any other warrant, seize any effects of such bankrupt (the necessary wearing apparel of such bankrupt, and of his wife, or children, only excepted) and also the books and writings then in the custody of such bankrupt, or of any other person in prison. But if any person so apprehended shall, within the time allowed, submit to be examined, and conform as if he had surrendered, such person shall have the same benefit as if he had voluntarily come in. And by the 5 Geo. 2. c. 30. s. 6. Eng. and 11 & 12 Geo. 3. c. 8. s. 29. Ir. in case any bankrupt shall be in prison or custody at the time of

5 Geo. 2. c. 30.
s. 6. Eng.
11 & 12 Geo. 3.
c. 8. s. 29. Ir.

issuing the commission, and is willing to submit to be examined, and can be brought before the commissioners and creditors, the expense thereof shall be paid out of the bankrupt's estate; but in case such bankrupt is in execution, or cannot be brought before the commissioners, then the commissioners shall attend the bankrupt in prison, &c. and take his discovery; and the assignees shall appoint one person or more to attend such bankrupt in

Bankrupt if in prison may be brought before commissioners; or if in execution commissioners to attend.

2 s 2

prison,

c. 7. s. 9. Eng. in case of the bankrupt withdrawing himself from his usual mansion house, the commissioners were to have power to award 5 proclamations in the queen's name, upon 5 market days, near the place of his abode, to yield his body before the commissioners; and in default thereof he was to be adjudged out of the queen's protection: and every person that should wittingly hide, convey, receive, or keep, any person so demanded by proclamation, was to suffer such imprisonment, and pay such fine to the queen, as the lord chancellor, (being informed thereof by the commissioners) should think fit.

prison, &c. and to produce to him his books and writings, in order to prepare his discovery; a copy whereof the assignees shall apply for, and the bankrupt shall deliver to their order 10 days before his last examination.

Commissioners may compel bankrupt to answer fully, by imprisonment.

2 Jac. 1. c. 15. s. 7. 8. & 9. Eng.

By the 2 Jac. 1. c. 15. s. 7. 8. & 9. Eng. the commissioners may examine the bankrupt upon interrogatories touching his estate and secret grants, and eloining thereof: And if he shall refuse to be examined, or to answer fully, it shall be lawful for the commissioners to commit him to close imprisonment until he shall better conform himself: And if upon examination it shall appear that he hath committed any wilful or corrupt perjury, tending to the damage of the creditors to the value of £10, he may be indicted in any of the king's courts of record, and shall stand in the pillory in some public place 2 hours, and have one of his ears nailed to the pillory and cut off. And by the 21 Jac. 1.

21 Jac. 1. c. 19. s. 6. Eng.

And may also enforce a discovery from the wife.

2 Jac. 1. c. 15. s. 7.

Penalty for fraudulently conveying or secreting property.

c. 19. s. 6. Eng. after such time as any person shall be lawfully declared a bankrupt, the commissioners shall have power to examine upon oath the wife of such bankrupt, for the discovery of the estate of such bankrupt concealed or disposed of by such wife, or by any other person. And the said wife shall incur such penalty for not coming before the said commissioners, or for refusing to be sworn and examined, or for not disclosing the truth, as by the former laws is provided, against any other person in like cases. And by s. 7. if any bankrupt shall, upon his examination before the commissioners, be found fraudulently to have conveyed away his goods, lands, or other estate, to the value of £20, to the end to hinder the execution of the statutes, or to defraud or hinder his creditors of the same, and shall not upon his examination discover unto the commissioners, and (if it be in his power) deliver unto them, all that estate so fraudulently conveyed away, or detained, or that cannot make it appear to the commissioners that he hath sustained some casual loss, whereby he is disabled to pay what he then owed, he may be indicted for such fraud or abuse, at the assizes or general sessions of the peace of the county or place where he shall become bankrupt; and if thereof convicted, he shall

shall be set upon the pillory for 2 hours, and have one of his ears nailed to the pillory, and cut off. These clauses of the 2 Jac. 1. c. 15. and 21 Jac. 1. c. 19. are not adopted in any of the Irish statutes concerning bankrupts.

By the 13 Eliz. c. 7. s. 5. Eng. the commissioners, (upon complaint made to them,) shall have power to call before them, by such process or means as they shall think convenient, all persons supposed to have any goods or debts of the bankrupt in their custody, or supposed to be indebted to such bankrupt; and upon their appearance to examine them, as well by their oaths as by such means as the commissioners shall think meet, for the knowledge of such goods and debts. And by s. 6. if such persons upon such examination do not disclose the whole truth, or deny to swear, then such persons, upon proof made before the commissioners, by examination or otherwise, shall forfeit double the value of all goods and debts by them concealed: which forfeiture shall be levied by the commissioners of the lands, goods and chattels, of such person, in such manner as is appointed by s. 2. *post*;* and be distributed for satisfaction of the creditors. And by the 2 Jac. 1. c. 15. s. 10. Eng. if any persons known or suspected to detain any of the lands, &c. goods or debts of the bankrupt, or to be indebted to, or for the benefit of the bankrupt, shall, after lawful warning given to the said persons to come before the commissioners to be examined, refuse to come, or shall not come at the time appointed, having no lawful impediment, (such as shall be allowed of by the commissioners, and which shall be then made known to the commissioners,) or having knowledge of any other meeting of the commissioners, shall not appear before them at such time as they may appoint, or being come shall refuse to be sworn, and to make answer to such interrogatories as shall be ministered, it shall be lawful for the commissioners to commit to such prison, as by them shall be thought meet, all

Commissioners may compel other persons to make discovery.

13 Eliz. c. 7. s. 5. Eng.

s. 6.

Penalty for concealment.

2 Jac. 1. c. 15. s. 10. Eng.

The commissioners may imprison any person refusing to appear and be examined.

* Which respects the authority of the commissioners over the person and estate of the bankrupt.

all such persons as shall so refuse to be sworn, &c. and also to direct their warrant to such persons as by them shall be thought meet, to apprehend such persons as shall refuse to appear, and to bring them before the commissioners to be examined; and upon their refusal to come or be examined, to commit the party so refusing to such prison as the commissioners shall think meet, until the said person shall submit himself to the commissioners, and be by them examined according to the 13 Eliz. c. 7.

s. 11.

Witnesses to be paid their expenses.

11 & 12 Geo. 3. c. 8. s. 32. Ir.

Analogous provisions.

and this act. Provided (s. 11.) that such witnesses as shall be so sent for, shall have such costs as the commissioners shall think fit; to be rateably borne by the creditors. And the clause of the 11 & 12 Geo. 3. c. 8. s. 32. Ir. is analogous, which provides, that it shall be lawful for the commissioners to send for and call before them, by such warrant or means as they shall think fit, such persons as they shall know or believe, can give any account of any act of bankruptcy committed by such person against whom any commission shall have issued, or of the estate or effects of such person; and to examine them in such manner as herein after mentioned, touching such bankrupt's estate and effects; and if any such person, on payment or tender of such reasonable charges as the said commissioners shall think sufficient, shall neglect or refuse to come and appear, not having a lawful excuse to be allowed by the commissioners, it shall be lawful for the commissioners, by warrant under their hands and seals, to apprehend any person so offending, and him to commit to such prison as by the commissioners shall be thought meet, there to remain until he shall submit himself to the commissioners, to appear, and be examined as hereinafter mentioned. Provided

s. 33.

5 Geo. 2. c. 30. s. 16. 17. & 18. Eng.

11 & 12 Geo. 3. c. 8. s. 34-5-6. Ir.

(s. 33.) that such witnesses as shall be so sent for shall have such costs as the commissioners shall think fit, to be paid out of the effects of such bankrupt. The 11 & 12 Geo. 3. c. 8. s. 34. 35. & 36. Ir. has followed the 5 Geo. 2. c. 30. s. 16. 17. & 18. Eng. in providing that it shall be lawful for the commissioners to examine, as well by word of mouth as upon interrogatories in writing, every person against whom any commission shall be awarded, touching

*touching all matters relating to the trade, and effects of such bankrupt, and also to examine every other person duly summoned or present at any meeting of the commissioners, touching all matters relating to the person, trade, and effects of such bankrupt, and any act of bankruptcy committed by him; and also to reduce into writing the answer of such bankrupt, or other person, which examination the party examined is required to subscribe, and in case such bankrupt, or other person, shall refuse to answer, or shall not fully answer, to the satisfaction of the commissioners, all lawful questions put by the commissioners, or shall refuse to subscribe his examination (not having a reasonable objection to the wording thereof, or otherwise, to be allowed by the commissioners,) it shall be lawful for the commissioners, by warrant, to commit him to such prison as the commissioners shall think fit, there to remain without bail until such person shall submit himself to the commissioners, and full answer make, to the satisfaction of the commissioners, to all such questions as shall be put to him, and subscribe such examination as aforesaid. Provided that in case any person shall be committed by the commissioners for refusing to answer, or not fully answering, any question, the commissioners shall in their warrant of commitment specify such question. And in case any person committed by the commissioners warrant [†shall bring a *habeas corpus*] to be discharged from any such commitment, if there shall appear any insufficiency in the form of the warrant, it shall be lawful for the court or judge by rule or warrant to commit every such person to the same prison till such person shall conform as aforesaid, unless it shall appear that he hath fully answered all lawful questions put to him by the commissioners; or in case such person shall have been committed for not signing the examination, unless it shall appear to such court, &c. that the party had a sufficient reason for refusing to sign the same. And in case

Commissioners may examine viva voce, as well as on interrogatories.

Warrant of committal to be special.

re committal till questions answered.

* "And the wife of any such person" here added in 11 & 12 Geo. 3. c. 8. Ir.

† "Shall make application to any court or judge having proper jurisdiction" are the words in the 11 & 12 Geo. 3. c. 8. Ir.

*Penalty on
gaoler for es-
cape.*

5 Geo. 2. c. 30.
s. 19. Eng.
11 & 12 Geo. 3.
c. 8. s. 37. Ir.

*The gaoler shall
produce such
person to any
creditor.*

Penalty.

*Reward for
discovering pro-
perty concealed.*

5 Geo. 2. c. 30.
s. 20. & 21.
Eng.
11 & 12 Geo. 3.
c. 8. s. 38. &
39. Ir.

case any gaoler shall wilfully suffer any such person to escape, or go without the walls or doors of such prison, until he shall be duly discharged as aforesaid, he shall for such offence, being convicted [†by indictment or information] forfeit [‡£500] for the use of the creditors of such bankrupt. But by the 5 Geo. 2. c. 30. s. 19. Eng. and 11 & 12 Geo. 3. c. 8. s. 37. Ir. such gaoler, &c. shall upon request, in the day time, of any creditor having proved a debt under the commission, and producing a certificate thereof under the hands of the commissioners, (which certificate the commissioners shall give *gratis*) forthwith produce such person so committed; and in casesuch gaoler shall refuse to shew such person so committed, and being in his actual custody at the time of such request, he shall forfeit £100 for the use of the creditors of such bankrupt, to be recovered by action of debt in any court of record at [*Westminster,] in the name of such creditor requesting the sight of such prisoner.

By the 5 Geo. 2. c. 30. s. 20. & 21. Eng. and 11 & 12 Geo. 3. c. 8. s. 38. & 39. Ir. every person who shall, after the time allowed to such bankrupt to surrender and conform, voluntarily make discovery of any part of such bankrupt's estate to the assignees or commissioners, not before come to the knowledge of the assignees, shall be allowed £5 *per cent.* and such further reward as the assignees, and the major part of the creditors in value present at any meeting of the creditors, shall think fit, to be paid out of the neat proceed of such bankrupt's estate which shall be recovered on such discovery, which shall be paid to the person so discovering the same, by the assignees, and be allowed them in their accounts. And every person who shall have accepted of any trust, and shall wilfully conceal any estate, real or personal, of any bankrupt, and shall not, within 42 days after such commission shall issue, and notice given in the Gazette, discover such trust and estate in writing to one of the commissioners or assignees, and submit to be examined (if

† Not in 11 & 12 Geo. 3. c. 8. s. 36. Ir.

‡ "£300" by the 11 & 12 Geo. 3. c. 8. s. 36. Ir.

• "Dublin" in the 11 & 12 Geo. 3. c. 8. s. 37. Ir.

(if required) shall forfeit £100, and double the value of the estate concealed, to the creditors; to be recovered by action of debt in any court of record at [†Westminster,] in the name of the assignees; in which case full costs shall be allowed to either party. By the 21 Jac. 1. c. 19. s. 8. Eng. and 11 & 12 Geo. 3. c. 8. s. 42. Ir. it shall be lawful for the commissioners, or any other persons or officers by them appointed, by their warrant under their hands and seals to break open the houses, chambers, shops, warehouses, doors, trunks or chests, of the bankrupt, where the said bankrupt, or any of his goods or estate, shall be reputed to be; and to seize upon, and order, the body, goods, money, and other estate of such bankrupt, as by the former laws are appointed, by imprisonment, or otherwise, as by the commissioners shall be thought meet.

Penalty for concealment.

+ "Dublin" in 11 & 12 Geo. 3. c. 8. s. 39. Ir.

21 Jac. 1. c. 19. s. 8. Eng.

11 & 12 Geo. 3. c. 8. s. 42. Ir.

Commissioners may break open houses, &c. in search of bankrupt's property.

By the 5 Geo. 2. c. 30. s. 7. 8. & 10. Eng. and 11 & 12 Geo. 3. c. 8. s. 43. 44. & 46. Ir. every bankrupt who shall surrender and conform as hereby directed, shall be allowed £5 *per cent.* out of the neat produce of the estate, in case the neat produce, after such allowance made, shall be sufficient to pay the creditors, who shall have proved their debts under the commission, 10s. in the pound; and so as the said £5 *per cent.* shall not amount to above £200; and in case the neat produce (over and above the allowance) shall be sufficient to pay 12s. 6d. in the pound, then every person so conforming shall be allowed £7 10s. *per cent.* so as such allowance shall not amount to above £250; and in case the neat produce shall, over and above the allowance, be sufficient to pay 15s. in the pound, then every person so conforming shall be allowed £10 *per cent.* so as such allowance shall not amount to above £300; and every such bankrupt shall be discharged from all debts owing at the time when he did become bankrupt. And in case such bankrupt shall afterwards be arrested or impleaded for any debt due before he became bankrupt, he shall be discharged upon common bail, and may plead in general, that the cause of action or suit did accrue before such time as he became bankrupt; and the certificate of such bankrupt's conforming,

Allowance to bankrupt conforming.

5 Geo. 2. c. 30. s. 7. 8. & 10. Eng. 11 & 12 Geo. 3. c. 8. s. 43. 44. & 46. Ir.

Effect of bankrupt's certificate.

forming, and the allowance thereof, shall be allowed as sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; and a verdict shall thereupon pass for such defendant, unless the plaintiff shall prove that such certificate was obtained unfairly, or make appear any concealment by such bankrupt to the value of £10, and such defendant shall recover full costs of verdict, non-suit, or judgment. But if the neat produce of the estate shall not amount to 10s. in the pound, after all charges deducted, such bankrupt shall not be allowed the £5 *per cent.* but shall be allowed so much as the assignees and commissioners shall think fit, not exceeding £3 *per cent.*

Certificate what to contain.

By whom signed.

Affidavit required.

Certificate to be confirmed by chancellor, &c.

But no discovery by any bankrupt of his estate and effects shall entitle him to the benefits allowed by this act, unless the commissioners shall, under their hands and seals, certify to the lord chancellor that such bankrupt hath made a full discovery of his estate, and in all things conformed himself according to the directions of this act, and that there doth not appear to them any reason to doubt of the truth of such discovery; and unless four parts in five, in number and value, of the creditors, (who shall be creditors for not less than £20 respectively, and who shall have proved their debts under such commission,) or some other person by them respectively duly authorized, shall sign such certificate, and testify their consent to such allowance and certificate, and to the bankrupt's discharge, to be also certified by such commissioners: but the commissioners shall not certify, till they have proof by affidavit or affirmation in writing, of such creditors, or of the persons by them authorized, signing the certificate, and of the authority by which any person shall be authorized by any creditor to sign such certificate; (which affidavit, &c. together with such authority to sign, shall be laid before the lord chancellor, with the said certificate;) and unless such bankrupt shall make oath, or affirm, in writing, that such certificate, and consent of the creditors thereunto, were obtained fairly, and without fraud; and unless such certificate shall, after such oath, &c. be allowed by the lord chancellor,

cellor, or by such two of the judges of the court of K. B. or C. B. or Exc. to whom the consideration of such certificate shall be referred by the lord chancellor: And any of the creditors of such bankrupt shall be heard before the respective persons aforesaid against the making of such certificate, and against the confirmation thereof: Nor shall any commissioner sign such certificate, till after four parts in five, in number and value, of the creditors, shall have signed the same. The 24 Geo. 2. c. 57. s. 10. Eng. and 11 & 12 Geo. 3. c. 8. s. 47. Ir. provide, that where the creditor of any bankrupt resides in foreign parts, the letters of attorney of such creditor, attested by a notary public, shall be a sufficient authority to any person to sign the certificate. By the 5 Geo. 2. c. 30. s. 11. Eng. and 11 & 12 Geo. 3. c. 8. s. 48. Ir. every bond, bill, note, contract, agreement or security, to be made or given, to or for any creditor, as a consideration to persuade him to sign such certificate, shall be void; and the party sued on such bond, &c. may plead the general issue, &c. And by the 24 Geo. 2. c. 57. s. 9. Eng. and 11 & 12 Geo. 3. c. 8. s. 50. Ir. where any person shall fraudulently swear or affirm before the commissioners, or by affidavit or affirmation exhibited to them, that a sum of money is due to him from any bankrupt which shall not be really due, and shall in respect of such pretended debt sign his consent to the certificate for such bankrupt's discharge from his debts; unless such bankrupt shall, before such time as the commissioners shall have signed such certificate, by writing by him signed and delivered to one of the commissioners or assignees, disclose the said fraud, and object to the reality of such debt, such certificate shall be void, and such bankrupt shall not have any of the benefits [*of the 5 Geo. 2. c. 30.] By the 5 Geo. 2. c. 30. s. 13. Eng. and 11 & 12 Geo. 3. c. 8. s. 49. Ir. if any bankrupt who shall have obtained his certificate shall be taken in execution, or detained in prison, on account of any debts owing before he became bankrupt, by reason that judgment was obtained before such certificate was allowed; it shall be lawful for any one of the judges of the court, wherein judgment has been so obtained, on such bankrupt's

24 Geo. 2. c. 57.
s. 10. Eng.
11 & 12 Geo. 3.
c. 8. s. 47. Ir.

*Creditor abroad
may sign certi-
ficate by attor-
ney.*

5 Geo. 2. c. 30.
s. 11. Eng.
11 & 12 Geo. 3.
c. 8. s. 48. Ir.

*Securities to
induce certificate
void.*

24 Geo. 2. c. 57.
s. 9. Eng.
11 & 12 Geo. 3.
c. 8. s. 50. Ir.

*Certificate frau-
dulent, void.*

5 Geo. 2. c. 30.
s. 13. Eng.
11 & 12 Geo. 3.
c. 8. s. 49. Ir.

*Certificate su-
persedes ca sa
for debt due
before bank-
ruptcy.*

* "Given by this act" in 11 & 12 Geo. 3. c. 8. Ir.

rupt's producing his certificate allowed, to order any sheriff or gaoler who shall have such bankrupt in his custody, to discharge such bankrupt without fee.

Bankrupts in what cases debarred from obtaining certificates.

5 Geo. 2. c. 30. s. 12. Eng.
11 & 12 Geo. 3. c. 8. s. 51. Ir.

By the 5 Geo. 2. c. 30. s. 12. Eng. and 11 & 12 Geo. 3. c. 8. s. 51. Ir. nothing in this act shall give any advantage to any bankrupt who shall, upon the marriage of any of his children, have given above the value of £100 unless he shall prove by his books, or otherwise upon his oath or affirmation before the commissioners, that he had at the time thereof, above the value so given, sufficient to pay every person to whom he was indebted, their full debts; or who shall have lost in one day the value of £5, or in the whole the value of £*100, within 12 months next preceding his becoming bankrupt, at cards, dice, tables, tennis, bowls, billiards, shovel-board, or cock-fighting, horse-races, dog-matches, or foot-races, or other game, or by bearing a share in the stakes, or betting; [†or that within one year before he became bankrupt, shall have lost £100 by contracts for stock, or shares of any public funds, where such contract was not to be performed within a week from the making, or where the stock was not actually transferred in pursuance of such contract.]

* "£300" in the 11 & 12 Geo. 3. c. 8. Ir.

† This clause not in the 11 & 12 Geo. 3. c. 8. Ir.

30 Geo. 3. c. 23. s. 2. Ir.

Bankrupt to keep regular books to entitle him to certificate.
39 Geo. 3. c. 57. s. 2. Ir.

But chancellor may receive excuse for such irregularity.

The 30 Geo. 3. c. 23. s. 2. Ir. further provides, that no bankrupt shall be entitled to his certificate, unless it shall appear to the commissioners, that he hath kept fair and regular books of account, such as a trader ought to keep. But the 39 Geo. 3. c. 57. s. 2. Ir. recites, that it may often happen that traders, either through ignorance, or misfortune, may not have kept regular books pursuant to the provisions of the laws relating to bankrupts; and therefore provides, that every such bankrupt may petition the lord chancellor, setting forth the special circumstances of his case, and that it shall be lawful for the lord chancellor upon due investigation thereof, to make such order for allowing the certificate of such bankrupt, provided it shall appear that the said bankrupt shall have fully complied with all other requisites.

Future estate of bankrupt liable in case of bankruptcy a second time.

By the 5 Geo. 2. c. 30. s. 9. Eng. in case any commission of bankruptcy shall issue against any person who shall have been before discharged by virtue of this act,

or

or shall have compounded with his creditors, or delivered to them his estate and effects, and been released by them, or been discharged by any act for the relief of insolvent debtors, then the body only of such person conforming shall be free from arrest and imprisonment; but the future estate of such person shall remain liable to his creditors (the tools of trade, necessary household goods, and necessary wearing apparel, of such bankrupt, and his wife and children, excepted) unless the estate of such person shall produce clear 15s. in the pound. The 11 & 12 Geo. 3. c. 8. s. 45. Ir. contained a similar provision: But by the 17 & 18 Geo. 3. c. 45. s. 11. Ir. whensoever any person, who had at any time before been a bankrupt and obtained his certificate, shall again become a bankrupt, and shall not have effects sufficient to satisfy the demands of his creditors, in such case the property which shall come to or be acquired by such bankrupt after his having become a second time a bankrupt, shall be subject to all such debts as shall have been contracted by him after the time of his having first become a bankrupt.

By the 10 Ann. c. 15. s. 3. Eng. and 11 & 12 Geo. 3. c. 8. s. 62. Ir. the discharge of any bankrupt from the debts by him owing at the time he did become bankrupt, shall not be construed to release or discharge any person who was a partner with such bankrupt in trade at the time he so became a bankrupt, or who then stood jointly bound, or had made any joint contract, with such bankrupt. By the 5 Geo. 2. c. 30. s. 36. Eng. and 11 & 12 Geo. 3. c. 8. s. 56. Ir. after any bankrupt shall have obtained his certificate and the same shall be duly confirmed, he shall be obliged to give his attendance upon every reasonable notice in writing being given to him, or left at his usual place of abode, by the assignees, in order to settle any account of such bankrupt's estate, or to attend any court of record to be examined touching the same, or for such other business as such assignees shall judge necessary for getting in the bankrupt's estate; for which attendance he shall be allowed 2s. 6d. *per diem*; and in case such bankrupt shall neglect to attend, or refuse to assist in such discovery, without good cause

5 Geo. 2. c. 30.
s. 9. Eng.

11 & 12 Geo. 3.
c. 8. s. 45. Ir.
17 & 18 Geo. 3.
c. 45. s. 11. Ir.

*Certificate not
to discharge co-
partners, or
co-obligors.*

10 Ann. c. 15.
s. 3. Eng.
11 & 12 Geo. 3.
c. 8. s. 62. Ir.

5 Geo. 2 c. 30.
s. 36. Eng.
11 & 12 Geo. 3.
c. 8. s. 56. Ir.

*Bankrupt, not-
withstanding his
certificate, to
attend assignees,
&c.*

to be shewn to the commissioners, to be by them allowed, (such assignees making proof thereof, upon oath or affirmation, before the commissioners,) the commissioners shall issue a warrant, to such persons as they shall think proper, for apprehending such bankrupt, and to commit him to the county gaol, there to remain until he shall conform to the satisfaction of the commissioners, and be by the commissioners, or by the lord chancellor, or by due course of law, discharged; and such gaoler shall keep such person in close custody, within the walls of the prison, under the penalties before mentioned* for suffering such prisoners to escape.

* *Vide* p. 632.

Duty and powers of commissioners in respect to assigning bankrupts property.

13 Eliz. c. 7.
s. 2. & 3. Eng.

Effect of such assignment.

With respect to the way in which the proceedings on a commission of bankrupt affect or transfer the estate and property of the bankrupt: The 13 Eliz. c. 7. s. 2. & 3. Eng. enacts, that the commissioners shall cause the lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes, and debts, of such person, to be appraised to the best value, and by deed indented, and inrolled in one of the king's courts of record, to make sale of the said lands, &c. and of all deeds and writings touching only the same, belonging to such bankrupt, and also of all chattels, &c.; or otherwise to order the same for satisfaction of the creditors; to every creditor a portion, rate and rate-like, according to the quantity of their debts: and every thing done by the said commissioners, shall be good in law against the said offender, his wife, heirs, children, and such persons as by joint purchase with the bankrupt shall have any estate or interest in the premises, and against all other persons claiming by or under such bankrupt by any act done after such person shall become bankrupt; [and also against the lords of the manors whereof the copyhold lands be holden: Provided that every person to whom any such sale of copyhold lands shall be made, shall, before they take any profit of the same, agree with the lords of the manors for the fines accustomed to be paid; and upon such agreement, the lords, at the next court, shall not only grant unto the vendees, upon request, the same customary lands by copy of court-roll, for such estate

tate as to them shall be sold, reserving the ancient rents, customs, and services, but also admit them tenants, and receive their fealty.] And by the 21 Jac. 1. c. 19. s. 12. Eng. the commissioners shall have power, by deed indented, and inrolled within 6 months after the making in some court of record at [*Westminster,] to bargain, sell, and convey, any lands, &c. whereof any bankrupt shall be seised of any estate tail, in possession, reversion, or remainder, and whereof no reversion or remainder shall be in the king, of the gift or provision of his majesty, his progenitors or successors, for the benefit of his creditors; and all bargains, sales, and conveyances, shall be good against all persons whom the bankrupt by common recovery, or other means, might debar from any remainder, reversion, rent, profit, title or possibility, of the said lands, &c. And by s. 13. if any bankrupt shall convey or assure any lands, goods, or estate, unto any person, upon condition or power of redemption at a day to come by payment of money or otherwise, it shall be lawful for the commissioners, before the time of the performance of such condition, to appoint, under their hands and seals, persons to make tender of money, or other performance, according to the nature of such condition, as fully as the bankrupt might have done; and the commissioners shall, after such tender or performance, have power to sell such lands, &c. for the benefit of the creditors, as fully as they may sell any the estate of the bankrupt. The 11 & 12 Geo. 3. c. 8. s. 3. Ir. has incorporated these provisions of the 13 Eliz. c. 7. s. 2. & 3. and 21 Jac. 1. c. 19. s. 12. & 13. save so far as respects copy-hold lands. And by the 13 Eliz. c. 7. s. 11. Eng. and 11 & 12 Geo. 3. c. 8. s. 8. Ir. if any person declared a bankrupt shall, at any time after, purchase lands, &c. or goods, &c. or any lands, &c. or goods, &c. shall descend or come to such bankrupt, before his debts shall be fully satisfied or agreed for, the said lands, &c. and goods, &c. shall by the commissioners be bargained, sold, extended, delivered, and used, for payment of the said creditors, in like manner as other the lands, &c. and goods, &c. of the bankrupt. By the 21 Jac. 1. c. 19.

21 Jac. 1. c. 19. s. 12. Eng.

Estate tail conveyed without common recovery.
* "Dublin" in 11 & 12 Geo. 3. c. 8. s. 3. Ir.

s. 13.

Mortgages, &c. redeemable by commissioners.

11 & 12 Geo. 3. c. 8. s. 3. Ir.

13 Eliz. c. 7. s. 11. Eng.
11 & 12 Geo. 3. c. 8. s. 8. Ir.

Property acquired, &c. by bankrupt after bankruptcy vested in commissioners.

s. 11.

21 Jac. 1. c. 19. s. 11. Eng. and 11 & 12 Geo. 3. c. 8. s. 9. Ir. if any s. 11. Eng.
11 & 12 Geo. 3. c. 8. s. 9. Ir.

Goods in possession, &c. of bankrupt at the time of bankruptcy vested in commissioners.

Bankrupts effects divided rateably notwithstanding judgment, &c.

21 Jac. 1. c. 19. s. 9. Eng.
* "Dublin" in 11 & 12 Geo. 3. c. 8. Ir.

11 & 12 Geo. 3. c. 8. s. 3. & 4. Ir.

s. 5.

Exception as to judgments obtained before bankrupt became a trader.

21 Jac. 1. c. 19. s. 10. Eng.

Fraudulent extents.

person shall become bankrupt, and at such time shall by the consent of the owner, have in his possession and disposition any goods or chattels, whereof he shall be reputed owner, and take upon him the sale or disposition as owner, the commissioners shall have power to sell the same, for the benefit of the creditors, as fully as any other part of the estate of the bankrupt.

By the 21 Jac. 1. c. 19. s. 9. Eng. every creditor having security for his debts by judgment, specialty, or other security, or having no security, or having made attachments in [*London,] or other place, of the goods of the bankrupt, (whereof there is no execution or extent served and executed upon any the lands, goods, and estate of such bankrupt, before such time as he shall become bankrupt) shall not be relieved upon any such judgment, &c. for more than a rateable part of their debts with the other creditors, without respect to any penalty contained in such judgment, &c. The 11 & 12 Geo. 3. c. 8. s. 3. Ir. contains a corresponding provision; and further provides, (s. 4.) that no creditor of any scrivener, salesmaster, banker, broker, factor, dealer in exchange or merchandize, within the description of this act, though for valuable consideration, who shall sue execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other creditors, but shall be paid rateably: Provided (s. 5.) that nothing herein shall extend to any security obtained before such bankrupt shall have become a scrivener, &c.; but all debts so secured shall have the same effect and priority as if this act had not been made. The 21 Jac. 1. c. 19. Eng. further provides, (s. 10.) that if any lands, goods, or other estate, of any bankrupt, shall be extended after such time as he is become bankrupt, by any person under colour of his being an accountant or indebted to the king, it shall be lawful for the commissioners to examine upon oath whether the said debt were due to such debtor or accountant, upon any bargain or contract originally made between such accountant

* "Such goods excepted as shall be in the custody of the bankrupt by consignment or factorage" here added by the 11 & 12 Geo. 3. c. 8. Ir.

ant and the said bankrupt; and if such bargain, &c. was originally made with any other person than the said accountant, or for the use of any other person, it shall be lawful for the commissioners to dispose of all such lands, &c. so extended for the use of the creditors.

By the 2 Jac. 1. c. 15. s. 5. Eng. and 11 & 12 Geo. 3. c. 8. s. 7. Ir. if any person who shall be a bankrupt, &c. shall convey to any of his children, or other person, any lands, &c. or goods, &c. or transfer his debts into other

Conveyances by trader void, as against creditors, unless upon marriage of child, &c.

2 Jac. 1. c. 15. s. 5. Eng.

11 & 12 Geo. 3. c. 8. s. 7. Ir.

mens names, except the same shall be conveyed or transferred upon marriage of any of his children, both the parties married being of the years of consent, or for some valuable consideration, the commissioners may sell or dispose thereof as if such bankrupt had been actually seised or possessed thereof at the time he became bankrupt.

But by the 21 Jac. 1. c. 19. s. 14. Eng. and 11 & 12 Geo. 3. c. 8. s. 6. Ir. no purchase for good and valuable consideration shall be impeached by virtue of

21 Jac. 1. c. 19. s. 14. Eng.

11 & 12 Geo. 3. c. 8. s. 6. Ir.

this act, unless the commission shall be sued forth against such bankrupt within 5 years after he shall become a

Limitation in favour of purchasers.

bankrupt. And by the 2 Jac. 1. c. 15. s. 13. & 14. Eng.

2 Jac. 1. c. 15. s. 13. & 14. Eng.

and 11 & 12 Geo. 3. c. 8. s. 21. & 22. Ir. the commissioners shall have power to assign or dispose of the debts due to and for the bankrupt, to the use of the creditors; and such disposition of the debts shall vest the property

11 & 12 Geo. 3. c. 8. s. 21. & 22. Ir.

in the persons to whom they shall be so assigned, as fully as if the bills, bonds, statutes, recognizances, judgments, deed, or contract, whereupon such debts shall

Bankrupt incapable to receive or pay debts after assignment.

arise, had been made to, with, or for said persons; and after such assignment, neither the bankrupt, nor any other to whom any such debt shall be due, shall have

power to recover the same, nor to make any release, or discharge thereof; neither shall the same be attached as

the debt of the bankrupt, or such other person; but the party to whom the same shall be assigned, shall have remedy to recover the same, in the name of the person to

whom the same shall be so assigned or ordered, as the party himself might have had. Provided that no debtor

Saving for bona fide payments to bankrupt.

of the bankrupt shall be hereby endangered for the payment of his debt, *bona fide*, to such bankrupt, before he shall know that he is a bankrupt. The 19 Geo. 2. c. 32.

19 Geo. 2. c. 32. s. 1. Eng. and 11 & 12 Geo. 3. c. 8. s. 63. Ir. further s. 1. Eng.

11 & 12 Geo. 3. provide, that no creditor of any bankrupt for goods *bona fide* sold to such bankrupt, or for any bill of exchange

Saving for bona fide payments by bankrupt.

bona fide drawn, negotiated, or accepted, by such bankrupt, in the usual course of trade, shall be liable to refund to the assignees of such bankrupt's estate, any money which before the suing forth such commission, was *bona fide*, and in the usual course of trade, received of such bankrupt, before the person receiving had notice that he was become a bankrupt, or in insolvent circumstances.

46 Geo. 3. c. 135. s. 1. & 2. U. K.

ces. But the 46 Geo. 3. c. 135 s. 1. & 2. U. K. enacts,

Secret acts of bankruptcy not to affect bona fide transactions.

that, in all cases of commissions of bankrupt, all conveyances by, all payments by and to, and all other transactions by and with, any bankrupt, *bona fide* made or entered into more than 2 calendar months before the date of such commission, shall be good and effectual notwithstanding any prior act of bankruptcy committed by such bankrupt: provided the person so dealing with such bankrupt had not at the time of such conveyance, &c. any notice of any prior act of bankruptcy, or that he was insolvent, or had stopped payment. But by s. 3. the issuing of a commission of a bankrupt, although such commission shall afterward be superseded, or the striking a docket for the purpose of issuing a commission, whether any commission shall issue thereupon or not, shall be deemed notice of a prior act of bankruptcy for the purposes of this act; if it shall appear that an act of bankruptcy had been actually committed at the time of issuing such commission or striking such docket.

Constructive notice.

Commissioners may examine as to proof of debts.

21 Jac. 1. c. 19. s. 9. Eng.

Next as to the proceedings upon a commission of bankrupt, with relation to the creditors: By the 21 Jac. 1. c. 19.

s. 9. Eng. the commissioners may examine upon oath, or by any other ways, any persons for the discovery of the debts owing to all such creditors as shall seek relief by such commission. The examination of witnesses touching the proof of debts seems to be provided for by the 11 & 12

* *Ante page 630-1.*

7 Geo. 1. st. 1. c. 31. s. 1. & 2. Eng.

11 & 12 Geo. 3. c. 8. s. 13. Ir.

Geo. 3. c. 8. s. 32. & 34. Ir.* By the 7 Geo. 1. st. 1. c. 31. s. 1. & 2. Eng. and 11 & 12 Geo. 3. c. 8. s. 13. Ir. every person who shall give credit on bills, bonds, notes, or other securities, promise or agreements for the same, upon

upon a good and valuable consideration, *bona fide*, which shall not be due or payable at the time of such persons becoming bankrupt, shall be admitted to prove such securities or agreements, as if they were made payable presently; and shall receive a dividend in proportion to the other creditors, deducting only thereout a rebate of interest, and discounting such securities after the rate of £5 per cent. per annum from the actual payment to the time such money would have become payable. And the bankrupt shall be discharged from such securities, as if such money had been due before the time of his becoming bankrupt. And by the 19 Geo. 2. c. 32. s. 2. Eng. and 11 & 12 Geo. 3. c. 8. s. 64. Ir. the obligee in any bottomry or *respondentia* bond, and the assured in any policy of insurance made upon valuable consideration, *bona fide*, shall be admitted to claim; and after the loss or contingency shall have happened, to prove their debt and demands in respect of such bond or policy, in like manner as if the loss or contingency had happened before the issuing of the commission of bankruptcy against such obligor or insurer; and shall have a proportionable dividend of such bankrupts estate; and every person against whom any commission of bankruptcy shall be awarded, shall be discharged of the debt owing on every such bond and policy of insurance, and shall have the benefit of the statutes against bankrupts, in like manner as if such loss or contingency had happened, and the money due in respect thereof had become payable, before the issuing of such commission. By the 5 Geo. 2. c. 30. s. 28. Eng. and 11 & 12 Geo. 3. c. 8. s. 40. Ir. where it shall appear to the commissioners that there hath been mutual credit given, or mutual debts, between the bankrupt and any other person, the commissioners or assignees shall state the account, and one debt shall be set against the other, and the balance only shall be claimed or paid. And the 46 Geo. 3. c. 135. s. 2. U. K. further provides, that every person with whom the bankrupt shall have *bona fide* contracted any debt before the date and suing forth of the commission, which if contracted before any act of bankruptcy might have been proved under such

Debts payable in futuro may be proved.

19 Geo. 2. c. 32. s. 2. Eng.
11 & 12 Geo. 3. c. 8. s. 64. Ir.

Obligees in bottomry bonds, &c. may prove.

5 Geo. 2. c. 30. s. 28. Eng.
11 & 12 Geo. 3. c. 8. s. 40. Ir.

Mutual debts to be set off.

46 Geo. 3. c. 135. s. 2. U. K.

Debts contracted after act of bankruptcy but before commission proveable;

such commission, shall, notwithstanding any prior act of bankruptcy, be admitted to prove such debt under such commission, as if no such prior act of bankruptcy had been committed; provided such creditor had not, at the time of such debt being contracted, any notice of such prior act of bankruptcy. And by s. 3. where it shall appear that there has been mutual credit given, or mutual debts, between the bankrupt and any other person, one debt or demand may be set off against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit was given to, or the debt contracted by, such bankrupt, as if no such prior act of bankruptcy had been committed; provided such credit was given to the bankrupt 2 calendar months before the date and suing forth of such commission; and provided the person claiming the benefit of such set off had not, at the time of giving such credit, any notice of any prior act of bankruptcy by such bankrupt committed, or that he was insolvent, or had stopped payment. And by s. 4. bankrupts obtaining their certificates shall be discharged from all debts made proveable by this act.

Set off;

s. 3.

Barred by certificate.

Penalty for proof of a false debt.

5 Geo. 2. c. 30. s. 29. Eng. 11 & 12 Geo. 3. c. 8. s. 41. Ir.

By the 5 Geo. 2. c. 30. s. 29. Eng. and 11 & 12 Geo. 3. c. 8. s. 41 Ir. if any person shall before the commissioners, or by affidavit or affirmation exhibited to them, falsely swear or affirm that any sum of money is due to him from any bankrupt, which is not really due, or that more is due than is really so, knowing the same to be not due, such person, being convicted thereof by indictment or information, shall suffer the penalties of wilful perjury, and be liable to pay double the sum so sworn or affirmed to be due; to be recovered and levied as other penalties upon penal statutes; and such double sum shall be rateably divided amongst all the creditors seeking relief under such commission. The 13 Eliz. c. 7. s. 7. Eng. also provided, that every person fraudulently demanding or detaining any debt, duty, or other thing, should forfeit double as much as he so claimed or detained. And this statute farther provides (s. 8.) that if the creditors be satisfied their debts, with the proper lands, goods, and debts, of the bankrupt, or with the same and some part of the forfeitures, and there shall remain

Overplus of forfeitures after paying creditors, how distributed.

13 Eliz. c. 7. s. 7. & 8. Eng.

remain an overplus of the said forfeiture of the double values, the one moiety of such overplus shall be by the commissioners paid to the crown, and the other be distributed amongst the poor within the hospitals in every city, town, or county, where such bankrupt shall be.

No Irish statute has directed a similar distribution of the overplus of such forfeitures. By the 5 Geo. 2. c. 30. s. 34.

& 35. Eng. and 11 & 12 Geo. 3. c. 8. s. 54. & 55. Ir.

the assignees, with the consent of the major part in value of the creditors who shall have proved their debts under

any commission, and who shall be present at any meeting of the creditors pursuant to notice in the Gazette, may

submit any difference between such assignees and any person whatsoever, on account of any matter relating to

the bankrupt's estate, to the determination of arbitrators (to be chosen by the assignees and major part in value of

such creditors, and the parties with whom they shall have such difference,) and perform their award, or otherwise

compound the matters in difference in such manner as the assignees, with such consent as aforesaid, shall think fit.

And the assignees may in like manner, with the consent of the major part of the creditors in value who shall be

present at a meeting to be had for the purpose, (of which notice shall be given in the Gazette) make composition

with any debtors to such bankrupts, where the same shall appear necessary. And the 5 Geo. 2. c. 30. s. 38. Eng.

and 11 & 12 Geo. 3. c. 8. s. 58. Ir. further provide, that no suit in equity shall be commenced by the assignees,

without the consent of the major part in value of the creditors, who shall be present at a meeting pursuant to

notice in the Gazette.

By the 19 & 20 Geo. 3. c. 25. s. 3. Ir. every debtor of any bankrupt who shall not pay his debts to the assignees,

within 3 months after issuing the commission, and demand made by such assignees, shall pay interest for the

same at the rate of £6 *per cent. per annum* from such demand. And for the better recovery of small debts,

this act provides, (s. 4.) that where the debt shall not exceed £20, a copy of the assignment of the commission-

ers to the assignees, shall be conclusive evidence of the issuing the commission, and of the person therein named

being

5 Geo. 2. c. 30.
s. 34. & 35.

Eng.

11 & 12 Geo. 3.

c. 8. s. 54. & 55.

Ir.

*Assignees may
refer matters to
arbitration.*

Or compound.

5 Geo. 2. c. 30.
s. 38. Eng.

11 & 12 Geo. 3.

c. 8. s. 58. Ir.

*Consent of cre-
ditors necessary
for suits in
equity.*

*Debtor of bank-
rupt to pay inte-
rest.*

19 & 20 Geo. 3.

c. 25. s. 3. Ir.

s. 4.

*Evidence in
suits for small
debts.*

being a bankrupt; provided that such assignment shall have been entered on record in the office of the clerk of the inrolments of bankruptcy; whose fee for inrolling same shall not exceed 20s. nor for said copy thereof 10s.

s. 5.

Creditors to give copies of and verify accounts.

And by s. 5. in all cases of debts against bankrupts alleged to be due by account, the creditors shall produce a copy of such accounts signed by themselves, and swear to the truth thereof according to the best of their knowledge and belief. These provisions are not contained in any of the English statutes concerning bankrupts.

First dividend after 4 months, and within 12 months.

5 Geo. 2. c. 30. s. 33. Eng.
11 & 12 Geo. 3. c. 8. s. 53. Ir.

With respect to making dividends amongst the creditors: the 5 Geo. 2. c. 30. s. 33. Eng. and 11 & 12 Geo. 3. c. 8. s. 53. Ir. provide, that the assignees shall, after the expiration of 4 * months, and within 12 months from the time of issuing any commission, cause 21 days notice to be given in the Gazette, of the time and place the commissioners and assignees intend to meet to make a dividend, at which time the creditors who shall not have before proved their debts, shall have liberty to prove the same; (which meeting for the city of London and all places within the bills of mortality shall be at Guildhall†); and upon every such meeting the assignees shall produce accounts of all their receipts and payments, and of what shall remain outstanding, and the particulars thereof: and if the creditors, or the major part of them then present, require it, such assignees shall be examined upon oath, or affirmation, before the commissioners, touching the truth of such accounts; and in such accounts the assignees shall be allowed such sums as they shall have expended in suing out and prosecuting such commission, and all other just allowances; and the commissioners shall order such part of the neat produce of the bankrupt's estate, in the hands of the assignees, as they shall think fit, to be forthwith divided amongst such of the creditors as shall have duly proved their debts, in proportion to their respective debts; and shall make such order

Assignees to produce and verify their accounts.

* By the 2 Jac. 1. c. 15. s. 4. Eng. four months was also the time limited for the commissioners to distribute.

† By the 11 & 12 Geo. 3. c. 8. s. 53. Ir. such meeting for the city of Dublin and liberties, shall be at the Tholsel or Royal Exchange.

order for a dividend in writing, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver to each assignee a duplicate of such order under their hands, which order of distribution shall contain an account of the time and place of making such order, and the sum total of the money remaining in the hands of the assignees, and how much in the pound is then ordered to be paid; and the assignees in pursuance of such order, and without any deed of distribution, shall forthwith make such dividend, and take receipts in a book from each creditor. And by the 5 Geo. 2. c. 30. s. 37. Eng. and 11 & 12 Geo. 3. c. 8. s. 57. Ir. within 18 months after the issuing of the commission, the assignees shall make a 2d dividend, in case the estate was not wholly divided upon the first, and shall cause notice to be inserted in the Gazette, of the time and place the commissioners intend to meet to make such 2d dividend, and for the creditors, who have not before proved their debts, to come in and prove the same; and at such meeting every assignee shall produce upon oath, or affirmation, his accounts; and what upon the balance shall appear to be in his hands shall by the like order of the commissioners be forthwith divided amongst the creditors in proportion to their debts; which 2d dividend shall be final, unless any suit shall be depending; or any part of the estate standing out that cannot have been disposed of, or that the major part of the creditors shall not have agreed to be disposed of in manner aforesaid; or unless some future estate of the bankrupt shall afterwards come to the assignees; in which case the assignees shall, as soon as may be, convert such future or other estate into money, and shall, within 2 months after any of the same shall be converted into money, by the like order of the commissioners, divide the same amongst such of the creditors as shall have made due proof of their debts under said commission.

5 Geo. 2. c. 30.
s. 37. Ir.
11 & 12 Geo. 3.
c. 8. s. 57. Ir.

*Second dividend
within 18
months.*

When not final.

By the 13 Eliz. c. 7. s. 10. Eng. if the creditors shall not be fully satisfied for their debts by the means before specified,* they shall have their remedy for levying the residue as they might have had before the making of this

*Creditors may
sue for balance
of their debts.*

13 Eliz. c. 7.
s. 10. Eng.

* *Vide p. 638.*

act.

s. 4. act. And by this statute (s. 4.) and 2 Jac. 1. c. 15. s. 15. Eng. the commissioners shall upon request by the bankrupts, not only make declaration to the bankrupts of the employing and bestowing of their lands, hereditaments, goods, and debts, but also make payment of any overplus, to such bankrupts, their executors, &c.; and the bankrupts, after full satisfaction of their creditors, shall have power to recover the residue of their debts. No such provisions are expressly contained in the 11 & 12 Geo. 3. c. 8. Ir. or other Irish statute.

And after creditors paid off property re-vested in bankrupt.

Assignees to keep books of account for inspection.

5 Geo. 2. c. 30. s. 26. & 32. Eng.

11 & 12 Geo. 3. c. 8 s. 18. & 52. Ir.

Funds of bankrupt where to be deposited.

19 & 20 Geo. 3. c. 25. s. 2. Ir.

If dividends not duly made, assignees how punishable.

By the 5 Geo. 2. c. 30. s. 26. Eng. and 11 & 12 Geo. 3. c. 8. s. 18. Ir. the assignees shall be obliged to keep books of account, wherein they shall enter all sums of money, or other effects, which they shall have got in or received out of the bankrupts estate; to which books every creditor who shall have proved a debt shall at all seasonable times have free resort. And by the 5 Geo. 2. c. 30. s. 32. Eng. and 11 & 12 Geo. 3. c. 8. s. 52. Ir. it is provided that before the creditors shall proceed to the choice of assignees, the major part in value of the creditors present shall, if they think fit, direct how, and with whom, the monies to be received out of the bankrupts estate, shall be paid in and remain until the same shall be divided; to which direction all assignees shall conform as often as £100 shall be got in. The 19 & 20 Geo. 3. c. 25. s. 2. Ir. further enacts, that as often as the 1st dividend shall not have been made within 12 months after the issuing of the commission, or that a 2d dividend shall not have been made within 18 months, &c. the commissioners shall, on the first Monday after the expiration of the said 12 months, or 18 months, or as soon after as conveniently may be, summon the assignees, and examine them upon oath or affirmation respecting their conduct as assignees; and the assignees shall furnish an account of the bankrupts estate, and of the money received and payments made out of the same, together with their respective vouchers, and also the bankers receipts for sums lodged by them, which account signed by the assignees the commissioners shall enter amongst the proceedings of such commission; and if it shall

shall appear to them, that any assignee has not lodged the money arising out of the bankrupts estate, in the manner directed by these acts, the commissioners shall have power, should such assignee be a creditor under the commission, to detain out of the debt of such assignee, £10 for each £100 which such assignee shall appear to have kept in his hands for the space of 21 days; which sum shall be divided amongst the other creditors in proportion to their respective debts; and if such assignee shall not be a creditor, or, though a creditor, shall not be entitled to receive a dividend equal to such penalty, then the commissioners shall have power to direct their clerk to bring a civil bill in the name of said clerk to the amount of said penalty, which when recovered is in like manner to be divided amongst the creditors; and the judge before whom such civil bill shall be brought, shall hear and determine the same though it should exceed the sum of £20; and the depositions and account taken and certified by the commissioners, verified upon the oath of said clerk, shall be conclusive evidence.

By the 19 & 20 Geo. 3. c. 25. s. 6. Ir. every person who shall act as agent or clerk, or who shall take out any commission of bankruptcy, shall be considered as secretary or clerk to the commission, and under the control and direction of the commissioners, and be obliged to take the following oath: “ I *A. B.* do swear, that during
 “ such time as I shall be employed as agent or clerk to
 “ the commission, or in any wise concerning the pro-
 “ ceedings in a commission of bankrupt issued and
 “ awarded, and now in prosecution against ———, I
 “ will faithfully and honestly, according to the best of
 “ my skill and knowledge, write, take down, and trans-
 “ cribe, all such depositions and evidence of the said
 “ bankrupt, as of all others who shall be sworn and ex-
 “ amined by or before the commissioners, under and by
 “ virtue of the said commission, as I shall by the com-
 “ missioners in the said commission named, or the ma-
 “ jority of them, be directed to write, take down, or
 “ transcribe; and also that I will in like manner, during
 “ such time, safely and faithfully preserve and keep from
 “ all

*Agent to com-
mission to be
under control of
commissioners.*

19 & 20 Geo.3.
c. 25. s. 6. Ir.

Agents oath.

s. 7.

*Messenger to
act in no other
capacity under
the commission.*

*Oath of mes-
senger.*

“ all kind of defalcation and embezzlement, all such de-
 “ positions, evidences, and proceedings, while the same
 “ shall by said commissioners be committed to my care;
 “ and that I will not knowingly use, or permit to be
 “ used, any fraud, deceit, or imposition, in suppressing
 “ or concealing the truth, or suggesting of a falsehood,
 “ in respect to any matter or thing which may in any
 “ wise tend to prevent the due and effectual execution of
 “ the several powers and trusts by law reposed in said
 “ commissioners. So help me God. And by s. 7. the
 person acting as messenger, and who shall issue any com-
 mission of bankruptcy, or when issued shall act as agent
 in such commission, shall from such time be incapable of
 holding the office of messenger; and every messenger
 shall before the commissioners take the following oath:
 “ I *A. B.* do swear, that I will faithfully, impartially,
 “ and honestly, according to the best of my skill and
 “ knowledge, execute the several orders which I shall
 “ receive from the commissioners, or the major part of
 “ them, in this said commission awarded and issued
 “ against *C. D.* and that I will not knowingly use, or
 “ permit to be used, any fraud, deceit, or imposition, in
 “ suppressing or concealing the truth, or suggesting any
 “ falsehood, in respect to any matter or thing which may
 “ in any wise tend to prevent the due and effectual exe-
 “ cution of the several covenants and trusts by law re-
 “ posed in said commissioners; or that I will not by
 “ myself, or any other person in trust for me, have any
 “ interest, employment, or concern, in the said commis-
 “ sion, in any other capacity whatsoever except that of
 “ messenger. So help me God.” Which clauses are
 peculiar to this Irish statute.

*Proceedings re-
corded, and copies
evidence.*

5 Geo. 2. c. 30.
s. 41. Eng.
11 & 12 Geo. 3.
c. 8. s. 59. &
60. Ir.

The 5 Geo. 2. c. 30. s. 41. Eng. and 11 & 12 Geo. 3.
 c. 8. s. 59. & 60. Ir. provide, that upon the petition of
 any person, the lord chancellor shall order such commis-
 sions, depositions, proceedings, and certificates, or other
 matters, to be entered of record; and in case of the
 death of the witnesses proving such bankruptcy, or in
 case the said commissions, &c. shall be lost, or mis-
 laid, a copy of the record of such commissions, &c.

signed

signed and attested as herein is mentioned, may be given in evidence to prove such commission and bankruptcy, or other matter; and all certificates which shall be allowed and confirmed, and entered of record as aforesaid, or a true copy of every certificate signed and attested as herein is mentioned, may be given in evidence in any court of record, and, without further proof, taken to be a bar against any action or suit for any debt contracted before the issuing of such commission; unless any creditor of the person that hath such certificate, shall prove that such certificate was fraudulently obtained. And the lord chancellor shall appoint a place [*near the inns of court] where the matters aforesaid shall be entered of record, and where all persons shall be at liberty to search; and the lord chancellor shall, by writing, appoint a proper person who shall by himself, or deputy, (to be approved of by the lord chancellor by writing) enter of record such commissions, &c. and have the custody of such entries; and also appoint such fee for his labour therein, as the lord chancellor shall think reasonable, not exceeding what is usually paid in like cases; and the person so to be appointed, and his deputy, shall continue to enter of record all the matters aforesaid, and to have the custody of the same, so long as they shall behave themselves well; and shall not be removed but by order in writing under the hand of the lord chancellor, on good cause therein specified. The 19 & 20 Geo. 3. c. 25. s. 1. Ir. also provides, that a proper place may be appointed by the lord chancellor, where the proceedings of the commissioners shall be lodged, so that the same may be at all times open to the inspection of such persons as have a right by the former acts to inspect the same; in which appointment proper direction may be given, in whose custody such proceedings shall be.

By the 5 Geo. 2. c. 30. s. 46. Eng. and 11 & 12 Geo. 3. c. 8. s. 16. Ir. all bills of fees, or disbursements, demanded by any solicitor, clerk, or attorney, employed under any commission of bankrupt, shall be settled by one of the masters of chancery; and such master shall

* "within the city or liberties of Dublin" by the 11 & 12 Geo. 3. c. 8. Ir.

19 & 20 Geo. 3. c. 25. s. 1. Ir.

Solicitors fees, &c. taxed by master of chancery.

5 Geo. 2. c. 30. s. 46. Eng. 11 & 12 Geo. 3. c. 8. s. 16. Ir.

shall have for his care in settling the same, as also for his certificate thereof, 20s. And the 11 & 12 Geo. 3. c. 8. s. 65. Ir. further provides, that it shall be lawful for the lord chancellor to settle the fees which shall be paid to the several officers and persons concerned in the issuing every such commission, and upon all petitions and proceedings in the execution thereof, other than such fees as are hereby ordered. By the 5 Geo. 2. c. 30. s. 25. Eng. and 11 & 12 Geo. 3. c. 8. s. 12. Ir. the creditors who shall petition for a commission of bankrupt, shall be obliged at their own costs to sue forth and prosecute the same, until assignees shall be chosen; and the commissioners shall, at the meeting appointed for the choice of assignees, ascertain such costs, and by writing shall order the assignees to reimburse such petitioning creditors out of the first effects of the bankrupt that shall be got in; and every creditor shall be at liberty to prove his debt without paying any contribution. The 5 Geo. 2. c. 30. s. 42. Eng. and 11 & 12 Geo. 3. c. 8. s. 14. Ir. provide, that no schedule shall be annexed to any deed of assignment of the personal estate of the bankrupt from the commissioners to the assignees: And there shall not be paid, out of the estate of the bankrupt, any monies for expenses in eating or drinking of the commissioners, or of any other persons, at the times of the meetings of the commissioners or creditors: And if any commissioner shall order such expense to be made, or eat or drink at the charge of the creditors, or out of the estate of such bankrupt, or receive above 20s. each commissioner, for each meeting, such commissioner shall be disabled for ever to act as a commissioner in any commission of bankrupt.

By the 2 Jac. 1. c. 15. s. 16. Eng. and 11 & 12 Geo. 3. c. 8. s. 61. Ir. if any action shall be brought against any commissioner, or other person having authority under the commission, for doing any matter by force [of the 13 Eliz. c. 7. or] of this statute, the defendant may plead not guilty, or justify that the act was done by authority of [the 13 Eliz. c. 7. or of] this act, without expressing

11 & 12 Geo. 3. c. 8. s. 65. Ir.

Chancellor may settle fees,

5 Geo. 2. c. 30. s. 25. Eng.

11 & 12 Geo. 3. c. 8. s. 12. Ir.

Expenses of suing forth commission &c. how defrayed.

5 Geo. 2. c. 30. s. 42. Eng.

11 & 12 Geo. 3. c. 8. s. 14. Ir.

Unnecessary expenses restrained.

Fees of commissioners limited.

Pleading in actions against persons acting under bankrupt laws.

2 Jac. 1. c. 15. s. 16. Eng.

11 & 12 Geo. 3. c. 8. s. 61. Ir.

expressing any matter contained in the said acts, or shewing forth the commission authorizing such act; and the plaintiff shall be admitted to reply, that the defendant did the fact supposed in the declaration of his own wrong, without any such cause alleged by the said defendant, whereupon issue shall be joined; [*and if verdict pass for the defendant, he shall have his costs.]

By the 2 Jac. 1. c. 15. s. 17. Eng. and 11 & 12 Geo. 3. ^{2 Jac. 1. c. 15. s. 17. Eng.}

c. 8. s. 17. Ir. if [†after any commission of bankrupt sued forth and dealt in by the commissioners, the offender] happen to die before the commissioners shall distribute the goods, lands, and debts, the commissioners shall proceed in execution of the commission, as if he were living. And by the 5 Geo. 2. c. 30. s. 45.

Eng. and 11 & 12 Geo. 3. c. 8. s. 16. Ir. no com- ^{5 Geo. 2. c. 30. s. 45. Eng. 11 & 12 Geo. 3. c. 8. s. 16. & 17. Ir.}

mission of bankrupt shall abate by the death of the king: and if it shall be necessary to renew any commission by reason of the death of the commissioners, or any other cause, such commission shall be renewed, and but half the fees usually paid upon

granting commissions shall be paid for such renewed commission. By the 46 Geo. 3. c. 135. s. 5. U. K. no

commission of bankrupt shall be avoided by reason of ^{46 Geo. 3. c. 135. s. 5. U. K.}

any act of bankruptcy having been committed, by any

person against whom such commission shall have issued, ^{Commission valid though petitioning creditor's debt contracted after bankruptcy.}

prior to the contracting the debt of the creditor upon whose petition such commission shall have issued; if such petitioning creditor had not any notice of such act

of bankruptcy, when the debt to him was contracted.

And lastly by the 21 Jac. 1. c. 19. s. 1. Eng. the statutes ^{21 Jac. 1. c. 19. s. 1. Eng.}

against bankrupts shall be in all things beneficially construed for relief of the creditors. Which clause is peculiar to this English statute. ^{Statutes to be liberally construed for creditors.}

CHAP.

* "The person for whom the verdict shall pass, shall have his costs" in 11 & 12 Geo. 3. c. 8. s. 17. Ir.

† "Any bankrupt" in 11 & 12 Geo. 3. c. 8. Ir.

CHAP. XXIII.

Of Title by Testament and Administration.

*Ancient right of
wife and child-
ren to their
reasonable parts
of the property
of a deceased
person.*

9 Hen. 3. c. 18.
E. & I.

7 W. 3. c. 6.
s. 10. Ir.

*Abolished in
Ireland.*

THE ancient right of the wife and children of a deceased person, to their reasonable parts of his personal property was declared by the great charter 9 Hen. 3. c. 18. E. & I. which enacted, that if any man that holdeth of the king die, and the sheriff shew letters patent of summons for the debt which the deceased did owe the king, it shall be lawful for the sheriff to attach and inroll all the goods of the deceased, being found in the fee, to the value of the debt, by the sight and testimony of lawful men; so that nothing be taken away till the king be paid the debt; and the residue shall remain to the executors to perform the will of the deceased. And if it be found that he owe nothing to the king, all the goods shall go to the use of the deceased, saving to his wife and children their reasonable parts. This ancient custom was abolished in Ireland by the 7 W. 3. c. 6. s. 10. Ir. which recites, that if any person died possessed of any personal estate, and having at his death a wife, or child or children, that in such case all said estate was to be divided into 3 equal parts, whereof one-third part belonged to the wife, another to the child or children, and the other third only was subject to the disposition of the party deceased by his last will, in case he made any, or to go in a course of administration in case he died intestate; and if he left a wife only, and no child or children, then the estate was to be divided into 2 parts, whereof one moiety was to go to the wife, and the other only to be subject to his disposition by will, or to go in a course of administration in case he died intestate; and so in like manner if he left a child or children, and no wife; and declares that
this

this custom shall be from henceforth null and void. This custom appears also to have prevailed in the province of *Abolished also in York, Wales, and London.* York, the principality of Wales, and city of London, till by the 4 & 5 W. & M. c. 2. explained by the 2 & 3 Ann. c. 5. Eng. 7 & 8 W. 3. c. 38. Eng. and 11 Geo. 1. c. 18. Eng. persons within those districts, and liable to those customs, were enabled to dispose of all their personal estates by will. In cases of intestacy the 13 Edw. 1. *13 Edw. 1. st. 1. c. 19. E. & I.* st. 1. c. 19. E. & I. first provided, that the ordinary should be bound to answer the debts of the person dying intestate, so far forth as his goods would extend, in like manner as executors. And by the 31 Edw. 3. st. 1. c. 11. *Ordinaries compelled to apply assets in payment of debts. 31 Edw. 3. st. 1. c. 11. E. & I.* E. & I. in case a man dieth intestate, the ordinary shall depute the next and most lawful friends of the intestate, to administer his goods; who shall have an action to recover, as executors, the debts due to such intestate, in the king's court (to administer for the soul of the deceased) and shall answer also in the king's court to those to whom the deceased was bound, in like manner as executors: *And to grant administration to next friends of intestate.* And they shall be accountable to the ordinaries, as executors in the case of testaments. The 21 Hen. 8. c. 5. *21 Hen. 8. c. 5. s. 3. Eng. 28 Hen. 8. c. 18. Ir.* s. 3. Eng. further provides, that in case any person die intestate, or the executors refuse to prove the testament, the ordinary shall grant administration to the widow or next of kin, or to both, at his discretion, taking surety for true administration. *Administration to widow or next of kin.* And where divers persons be in equality of kindred, the ordinary may accept one or more at his election. And the 28 Hen. 8. c. 18. Ir. contains the same provision. By the 22 & 23 Car. 2. c. 10. *22 & 23 Car. 2. c. 10. s. 1. Eng.* s. 1. Eng. all ordinaries and ecclesiastical judges shall, upon granting administration of the goods of persons dying intestate, take sufficient bonds with 2 or more sureties, in the name of the ordinary, with condition to the following effect: * that the administrator shall make a true and perfect inventory, of all the goods, chattels, and credits of the deceased, and exhibit the same into the registry of, &c. at or before, &c.; and such of them as shall come to his hands or the possession of any other person for him, shall well and truly administer according to law; and make a just and true account of his administration

* The precise words of the condition are contained in the act.

tration at or before, &c. ; and the rest of the goods which shall be found remaining upon the account, the same being first examined and allowed by the court, shall deliver and pay to such person, as the judge by his decree or sentence, pursuant to the intent of this act, shall appoint : And if it after appears that any will was made, and the executor therein named exhibits the same in court, requesting that it should be allowed and approved, that the administrator, being thereunto required, do render and deliver the said letters of administration, (approbation of such testament being first had) in the said court. And by s. 3. such bonds shall be pleadable in any courts of justice : And such ordinaries, &c. may call such administrators to account, and order distribution of what remaineth after all debts, funerals, and just expenses of all sorts allowed, saving to persons aggrieved their right of appeal. By s. 5. all ordinaries, and others by this act enabled to make distribution, shall distribute the surplusage, one third to the wife of the intestate, the residue by equal portions amongst his children, and such as legally represent them, if any be dead, other than such children, (not heir at law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his life-time by portion equal to the share which shall by such distribution be allotted to the other children ; and if not equal, then so much of the surplusage of the estate of the intestate shall be distributed to such child or children so advanced, &c. as shall make the estate of all the children to be equal as near as can be : But the heir at law shall have an equal part in the distribution with the other children, without any consideration of the value of the land which he hath by descent, or otherwise, from the intestate. But by s. 6. if there be no children, nor legal representatives of them, one moiety shall be allotted to the wife, the residue equally to the next of kin of the intestate in equal degree, and those who represent them : Provided (s. 7.) that no representation shall be admitted amongst collaterals, after brothers and sisters children : and if there be no wife, all shall be distributed amongst the children ; and if no child,

*Surplus after
debts, &c. how
distributed.*

s. 6.

s. 7.

child, to the next of kin to the intestate in equal degree, and their representatives. And by s. 8. no such distribution shall be made till one year after the intestate's death; and every one to whom any thing shall be allotted, shall give bond with sureties in the said courts, that if debts afterwards appear, he shall refund his rateable part thereof, and of the costs of suit, and charges of the administrator by reason of such debt. By s. 9. where the ordinary hath used to grant administration *cum testamento annexo*, he shall continue so to do.* The statute of Frauds (29 Car. 2. c. 3. Eng.) provides (s. 25.) that the 22 & 23 Car. 2. c. 10. shall not extend to the estates of *feme coverts* that die intestate; but that their husbands may have administration of their personal estates, and recover and enjoy the same as before said act. And by the 1 Jac. 2. c. 17. s. 7. Eng. if after the death of a father any of his children shall die intestate, without wife or children, in the life time of the mother, every brother and sister, and their representatives, shall have an equal share with her. By s. 6. no administrator shall be cited into court to render an account of the personal estate of his intestate, otherwise than by an inventory thereof, unless in behalf of a minor, or creditor, or next of kin; nor shall be compellable to account before any ordinary or judge empowered by 22 & 23 Car. 2. c. 10. *supra*, otherwise than as aforesaid. The 7 W. 3. c. 6. Ir. has incorporated these several provisions of the 22 & 23 Car. 2. c. 10. 29 Car. 2. c. 3. s. 25. and 1 Jac. 2. c. 17. and followed these statutes in these respects without deviation.

The 21 Hen. 8. c. 5. s. 2. & 3. Eng. regulates the fees upon probates, and commissions of administration; and requires them to be sealed and delivered without any frustratory delay. And by s. 4. enacts, that the executors, or such persons to whom administration shall be committed, taking to them 2 at least, to whom the person dying was indebted, or made any legacy, and upon their absence 2 other persons being next of kin to the person dying,

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dying,

* This act (s. 4.) contains a saving for the customs of the city of London, and province of York: But by the 1 Jac. 2. c. 17. s. 8. Eng. such part of any intestates estate as any administrator by reason of such custom only may claim to have exempt from distribution, shall be subject to distribution as in other cases within the 22 & 23 Car. 2. c. 10.

s. 8.

s. 9.

29 Car. 2. c. 3.
s. 25. Eng.Right of hus-
bands excepted.1 Jac. 2. c. 17.
s. 7. Eng.Brothers and
sisters to share
equally with
mother.

s. 6.

Administrator
how compellable
to account.7 W. 3. c. 6.
Ir.Fees of probates,
&c.21 Hen. 8. c. 5.
s. 2. & 3. Eng.
s. 4.Inventories how
made by execu-
tors and admin-
istrators.

dying, and in their absence 2 other honest persons, shall make a true inventory of all goods, as well moveable as not moveable, that were of the person deceased; and the same shall cause to be indented, whereof the one part shall be by the executors or administrators, upon oath to be taken before the bishops or ordinaries, their officials or commissaries, or other persons having power to take probate of testaments, delivered unto the keeping of said bishops, &c. and the other part to remain with the executors or administrators; and no bishop, &c. shall refuse to take any such inventory. And by s. 5. if the

s. 5.

*Copies of wills
and inventories
to be given.*

person deceased will any lands to be sold, the money thereof, or the profits of the lands, shall not be accounted as any of the goods of the person deceased: and the bishop, &c. upon delivery of the seal, and sign of the testator, shall cause the same to be defaced, and re-deliver the same to the executors: and in case any person require a copy of the testaments so proved, or of the inventory, the ordinary, &c. shall with convenient speed deliver a copy: And a fee is hereby limited for the search and copy: But it is provided (s. 6.) that where any have used to take less, for probates, &c. or other cause concerning the same, they shall take such sums of money as they have used to take, and not above.—

s. 6.

s. 7.

By s. 7. every bishop, &c. that shall do or attempt any thing against this act, shall forfeit to the party grieved so much as any such person shall take contrary to this act; and also forfeit £10, whereof one moiety shall be to the king, and the other moiety to the party grieved that will sue by action of debt, &c. in any of the king's courts. Pro-

s. 8.

vided (s. 8.) that this act be not prejudicial to any ordinary, &c. but that every of them may convent before them executors, to prove or refuse the testament, and to

28 Hen. 8. c. 18.
Ir.

bring in inventories, &c. as before. The 28 Hen. 8. c. 18. Ir. contains similar clauses: and further provides,

s. 7.

(s. 7.) that no ordinary, &c. shall compel the husband or friend of any woman covert to prove any testament of her husband's goods, or shall take any thing for the probate of any testament of any woman covert, or administration of her goods, unless the said woman covert be an

*Administration
to be granted to
husband of feme
covert execu-
trix, &c.*

executor

executor or administrator, or otherwise have cause of action whereof her husband after her death have no remedy by the common law.

The 38 Geo. 3. c. 87. Eng. provides, that, at the expiration of 12 calendar months from the death of any testator, if the executor to whom probate shall have been granted, is then residing out of the jurisdiction of his majesty's courts of law or equity, it shall be lawful for the ecclesiastical court which hath granted such probate, upon the application of any creditor, next of kin, or legatee, to grant a special administration; (the form of which is prescribed by s. 3.) for which administration a stamp duty of 5s. shall be paid: And by s. 2. the party applying to the spiritual court to grant such administration, shall make such affidavit as herein mentioned, (stating the nature and amount of the debt due by the deceased, that the only executor capable of acting is out of the kingdom, &c. and that the deponent is desirous of exhibiting a bill in equity, specifying the court, for the purpose of being paid his demand out of the assets of the testator.) By s. 4. it shall be lawful for the court of equity in which such suit shall be depending, to appoint (if needful) any person to collect any outstanding debts or effects due to the estate, and to give discharges for the same, such person giving security in the usual manner duly to account for the same. And by s. 5. it shall be lawful for the accountant general of the court of chancery, or for the secretary, or deputy secretary, of the bank of England, to transfer any stock belonging to such deceased person, into the name of the accountant general, in trust for such purposes as the court shall direct, in any suit in which the person to whom administration hath been granted, shall be, or may have been, a party: provided, that if the executor capable of acting as such, shall return to and reside within the jurisdiction of any of said courts, pending such suit, he shall be made a party to such suit; and the costs incurred by granting such administration, and by proceeding in such suit against such administrator, shall be paid by such person, or out of such fund as said court shall direct.

Special administration where executor out of the kingdom, &c.

38 Geo. 3. c. 87. s. 1. & 3. Eng.

s. 2.

s. 4.

s. 5.

s. 6. This act also provides (s. 6.) that where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the spiritual court shall think fit, until such infant shall have attained the age of 21; at which period, and not before, probate shall be granted to him. And by s. 7. the person to whom such administration shall be granted, shall have the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore ætate* of the next of kin. This statute has not been followed by any corresponding act in Ireland.

Administration granted with the will annexed to guardian of infant executor.

Ord. 58. Sec. 3 Cap. 91

What nuncupative wills good.

29 Car. 2. c. 3. s. 19. Eng.

The statutes relative to the devising of lands, have been already stated: and with respect to wills and testaments bequeathing personal property, the 29 Car. 2. c. 3. s. 19. Eng. enacts, that no nuncupative will shall be good, where the estate bequeathed shall exceed the value of £30, that is not proved by the oaths of 3 witnesses present at the making thereof:* nor unless it be proved that the testator at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect; nor unless such will was made in the last sickness of the deceased, and in the house of his habitation or dwelling, or where he hath been resident for 10 days, or more, next before the making such will; except such person was surprised, or taken sick, being from his own home, and died before he returned to the place of his dwelling. And by s. 20. after 6 months from the speaking of the pretended testamentary words, no testimony shall be received to prove any nuncupative will, except the said testimony, or the substance thereof, were committed to writing within 6 days after the making of said will. And by s. 21. no letters testamentary or probate of any nuncupative will shall pass the seal of any court, till 14 days after the decease of the testator be fully expired; nor shall any nuncupative will be received to be proved, unless process have

Probate when granted.

* By the 4 Ann. c. 16. s. 14. Eng. and 6 Ann. c. 10. s. 14. Ir. they must be such witnesses as ought to be allowed upon trials at law.

have first issued to call in the widow, or next of kindred to the deceased, to contest the same. By s. 22. no will in writing concerning personal estate shall be repealed, nor shall any clause or bequest therein be altered, by any words, or will by word of mouth only, except the same be in the life of the testator committed to writing, and after the writing thereof read unto the testator, and allowed by him, and proved to be so by 3 witnesses. Provided (s. 23.) that any soldier being in actual military service, or any mariner being at sea, may dispose of his moveables, wages, and personal estate, as before this act. And by s. 24. nothing in this act shall alter the jurisdiction or probate of wills, but the prerogative court, and other courts having such right, shall retain the same subject to the directions of this act. The clauses of the statute of frauds in Ireland, 7 W. 3. c. 12, s. 15. to 20. Ir. are precisely similar.

s. 22.

Revocation of wills to be in writing, &c.

s. 23.

Exception as to soldiers and mariners.

s. 24.

7 W. 3. c. 12.
s. 15. to 20.
Ir.

With respect to the interest vested in executors: By the 13 Edw. 1. st. 1. c. 23. E. & I. executors shall have a writ of account, and the like action and process in the same, as the testator might have had. And by the 4 Edw. 3. c. 7. E. & I. executors, for a trespass done to their testators, as of the goods of their testators carried away in their life, shall have action against the trespassers, and recover their damages, in like manner as they whose executors they be should have had, if they were in life. And by the 25 Edw. 3. st. 5. c. 5. E. & I. executors of executors shall have actions of debts, accounts, and goods carried away of the first testators, and execution of statutes merchants and recognizances made to the first testator, in the same manner as the first testator should have had, if he were in life. And on the other hand this statute provides, that executors of executors shall answer to others for as much as they have recovered of the goods of the first testator, as the first executors should do, if they were in full life. The 17 Car. 2. c. 8. Eng. enacts, that where any judgment, after a verdict, shall be had by or in the name of any executor or administrator, an administrator *de bonis non* may sue forth a *scire facias*, and take execution upon such judgment.

*Executors shall have certain actions in like manner as testators.*13 Edw. 1. st. 1.
c. 23. E. & I.
4 Edw. 3. c. 7.
E. & I.25 Edw. 3. st. 5.
c. 5. E. & I.*Executors of executors to have, and be liable to, actions as executors.*17 Car. 2. c. 8.
Eng.7 W. 3. c. 6.
s. 9. Ir.*Administrator de bonis non may sue upon judgment of executor.*

21 Hen. 8. c. 4.
Eng.

*All executors
need not join in
executing cer-
tain trusts.*

43 Eliz. c. 8.
Eng.
10 Car. 1. st. 3.
c. 10. Ir.

*Executors de
son tort how
chargeable.*

30 Car. 2. c. 7.
Eng.
7 W. 3. c. 6.
s. 11. Ir.

*And executors,
&c. of executors
de son tort.*

4 & 5 W. & M.
c. 24. s. 12.
Eng.

*Executors &c.
of rightful exe-
cutors &c. an-
swerable for
their devasta-
vit.*

judgment. And the 7 W. 3. c. 6. s. 9. Ir. has in like manner established a privity between the administrator *de bonis non*, and the former executor or administrator of the first testator or intestate. By the 21 Hen. 8. c. 4. Eng. where part of the executors of any person making will of lands, &c. to be sold by his executors for payment of debts, or of legacies to wife, children, or for other charitable deeds, refuse to take upon them the administration of such will, all bargains and sales of such lands, &c. made by them only of the executors that accept such administration, shall be as effectual, as if all the executors had joined in the making the bargain and sale. No statute similar to this has been passed in Ireland. As to executors *de son tort*: By the 43 Eliz. c. 8. Eng. every person that shall obtain or have any goods or debts of any intestate, or a release or other discharge of any debt that belonged to the intestate, upon fraud, or without such valuable consideration as shall amount to the value, or thereabouts, except it be in or towards satisfaction of some debt, shall be chargeable as executor of his own wrong, so far as such goods and debts coming to his hands, or whereof he is released, will satisfy, deducting all just debts, upon good consideration, without fraud, owing to him by the intestate, and all other payments which lawful executors, &c. ought to pay. The 10 Car. 1. st. 3. c. 10. Ir. is the corresponding statute in Ireland. The 30 Car. 2. c. 7. Eng. further enacts, that the executors and administrators of persons who, as executors in their own wrong, or administrators, shall waste any estate or assets of any person deceased, shall be chargeable [*in the same manner as their testator or intestate would have been if living.] And by the 4 & 5 W. & M. c. 24. s. 12. Eng. the executors or administrators of any executor or administrator of right, who shall waste or convert to his use goods or estate of his testator or intestate, shall be chargeable in the same manner as their testator or intestate would have been. The 7 W. 3. c. 6. Ir. contains a corresponding provision (s. 11.) to that of the 30 Car. 2. c. 7.

* "To make good the same out of the assets of such testator, &c." by the 7 W. 3. c. 6. s. 11. Ir.

c. 7. Eng. *supra*: But no Irish statute has made the executors, &c. of rightful executors, &c. answerable for the *devastavit* of such executors, &c. as has been done by the 4 & 5 W. & M. c. 24. s. 12. Eng. *supra*, which amends the 30 Car. 2. in this respect, or removes the doubt entertained as to the extent of its provision. To restrain the abuse of sheriffs, in respect to returning *devastavits* against executors and administrators; the

5 Geo. 2. c. 4. s. 8. Ir. provides, that no sheriff or other officer shall return a *devastavit*, but upon an inquisition taken on the oaths of 12 lawful men of the county, to whom proper challenges may be taken; and the plaintiff, his attorney or agent, shall give the defendant in such suit, his attorney or agent, 15 days notice of the taking such inquisition, and of the time and place of taking the same; and such inquisition shall not be taken in any county where no evidence of a *devastavit* can be given, which was committed in such county, unless in cases where the entire *devastavit* committed shall appear to have been out of the kingdom: This provision is peculiar to the law of Ireland.

5 Geo. 2. c. 4.
s. 8. Ir.

No sheriff to
return a *devas-*
tavit but upon
inquisition in
the proper
county.

For the better discovery of charitable donations and bequests it is provided by the 3 Geo. 3. c. 18. Ir. as amended by the 40 Geo. 3. c. 75. Ir. that the vicar general, or his surrogate, and the register of the prerogative, shall make a return to the bishop of the diocese, or to the archbishop of Armagh, at the annual visitation, or between 25 March and 24 June, in every year, of every charitable donation or bequest contained in any will which shall be entered in the office of such vicar general, &c.; which returns shall likewise contain the names of the persons to whom probate of any such will, or letters of administration with such will annexed, shall be granted, with the date of such will, probate, or administration: And copies of such returns upon oath, shall be lodged with the secretary of the commissioners of charitable donations and bequests (who are incorporated by the 40 Geo. 3. c. 75. Ir.); and said copies shall be so lodged between 1 July and 1 November in every year; and every such officer who shall neglect to lodge such copy

Returns of
charitable be-
quests, &c. to
be made by
vicars general,
&c.

3 Geo 3. c. 18.
Ir.

40 Geo. 3. c. 75.
s. 4. Ir.

And lodged with
the secretary of
the commission-
ers of charitable
donations, &c.

of

*Penalty.**Executors, &c.
to publish cha-
ritable bequests,
&c.**Penalty.*

of such return with the secretary of the commissioners, shall forfeit £5 to be recovered by any person who shall sue by civil bill before any judges of assize, in their circuits, or before any assistant barrister at the general sessions of the peace, or before the recorder of Dublin, as the case may require: And the person to whom probate or administration shall be granted, shall, within 3 calendar months after obtaining the same, publish in the Dublin Gazette, 3 times successively, every charitable donation, &c. contained in such will, the name of the testator, the date of such will or codicil, and the name of the person to whom such charitable donation, &c. is given and bequeathed, and the name of the person appointed by the testator for the management and direction thereof; and the expense of such publication shall be paid by the said executors, &c. out of the said charities; and every person who shall neglect to publish the same, shall forfeit £50, to be recovered by any person that shall sue by action of debt, &c. in any court of record: Which provisions are peculiar to the law of Ireland.

Divers provisions concerning executors and administrators are contained in the several acts relating to the stamp duties on probates and administrations, and receipts for legacies in England and Ireland respectively: But I have, in the progress of this work, declined entering upon any particular detail of those or any other statutes concerning the king's revenue; this compilation being confined to the general statute law.

END OF FIRST VOLUME.

Gabbett, Joseph

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